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Supreme Court of the United States

OCTOBER TERM, 1954

No. 37

MARION L. HOLLAND AND ETHEL E. HOLLAND,
PETITIONERS,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 22, 1954
CERTIORARI GRANTED JUNE 7, 1954

United States Court of Appeals

TENTH CIRCUIT

No. 4684.

MARION L. HOLLAND, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

No. 4685.

ETHEL E. HOLLAND, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED JUNE 3, 1953.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT.

No. 4684.

MARION L. HOLLAND, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

No. 4685.

ETHEL E. HOLLAND, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

Statement Of Points Relied On On Appeal.

Comes now the appellants above-named, by their attorneys, Anthony F. Zarlengo, H. D. Reed and Frank A. Bruno, and make the following statement of Points upon which they will rely to reverse, vacate, set aside and hold for naught that certain judgment of conviction entered in this cause by the Honorable Willis W. Ritter, The United States District Judge for the District of Utah, specially assigned to the District of Colorado.

1. The Court committed prejudicial error in finding, determining and ruling that the indictments and the several counts therein contained properly charged the appellants, and each of them, with a violation of Section 145(b) of 26 U. S. C. A.

2. The Court committed prejudicial error in denying and over-ruling appellants' Motion to Quash or Dismiss the indictment.

3. The Court committed prejudicial error in granting and allowing the appellee's Motion to Consolidate and Join for Trial the several indictments and the several counts therein contained.

4. The Court committed prejudicial error in submitting,

for the jury's consideration, the form of verdict it did, and in receiving and accepting what purported to be the verdict of the jury, as thereon attempted to be recorded.

5. The Court committed prejudicial error in finding, determining and ruling that the appellants, and each of them, were guilty as charged in Count 3 of the indictment, and in entering the judgment of conviction against each of them.

6. The Court committed prejudicial error in receiving and admitting in evidence, over the objections of the appellants, the following:

(a) The oral testimony of Leonard DeLue with respect to the witness' profits earned in the hotel establishment prior to its sale and operation by the witness to the appellants.

(b) The extra judicial admissions of the appellants without a prior establishment, by independent evidence, of the corpus delecti of the crime charged in the indictment.

(c) The testimony of J. E. McCloskey with reference to transactions between the Fred Davis Furniture Store and M. L. Holland and the Holland Cafe Company, a corporation, during the year 1933.

(d) Exhibits M, N, O, and P, all being letters written in 1928 and 1929 by and on behalf of the Pine Grove Cafe Company, a corporation.

(e) Testimony of Henry P. Thode with respect to a judgment rendered against the Holland Cafe Company, a corporation, on account of rents due and owing for the year 1933.

(f) Exhibits Q and R, being certificates of records of the Bureau of Internal Revenue purportedly showing assessments and payments of taxes for the years 1913 to 1933, and 1933 to 1945, respectively.

(g) Exhibits T, U, and V, being certificates of assessments and payments of taxes by the Holland Cafe Company, a corporation, the Pine Grove Cafe Company, a corporation, and the Rocky Mountain Restaurant Company, a corporation, respectively, for years prior to those covered in the indictment.

(h) Exhibits W, X, and Y, being certificates of assessments and payments of taxes, in the District of Wyoming, by M. L. Holland for the years 1933 to 1937, 1938, 1939, 1940 and 1941, respectively.

(i) Exhibits Z and AA, being individual tax returns for the years 1944 and 1945 purportedly filed in the District of Montana by M. L. Holland.

(j) The oral testimony of Bernard A. Boehner with respect to the payment of taxes by the appellants, in the District of Montana, for the years 1945, 1946 and 1947.

(k) Exhibits BB and CC which purport to be assessment lists of taxes, in and for the District of Montana, for the months of June, 1946 and February, 1947, respectively.

7. The Court committed prejudicial error in denying and over-ruling appellants' Motion for Judgment of Acquittal.

8. The Court committed prejudicial error in finding, determining and ruling that the proof offered in support of the indictment was sufficient to establish each and every essential element of the crime therein charged, and in finding, determining and ruling that the case as one for the determination of the jury.

9. The Court committed prejudicial error in its instructions to the jury as follows:

(a) In failing to properly instruct upon the law of circumstantial evidence, its character, its nature and its quality necessary to warrant a conviction.

(b) In failing to instruct that circumstantial evidence must exclude every reasonable hypothesis of innocence in order to warrant conviction.

(c) As to character evidence, it failed to instruct that evidence of good character may, of itself, create reasonable doubt where no reasonable doubt might otherwise exist, and that a person of good character is not as likely to commit a crime as one whose character is not good.

(d) As to the burden of proof, the Court failed to instruct upon the particular section of the Internal Revenue Code which formed the basis of the indictment, or, upon the essential elements of the crime charged in the indictment.

(e) As to presumption of innocence, it failed to charge that the presumption continues throughout the entire case until overthrown by evidence sufficient to exclude all reasonable doubt of the truth of the charge.

(f) As to reasonable doubt, the instruction is wholly inadequate, is misleading and confusing in that:

1. It fails to properly define the term "reasonable doubt."

2. It fails to charge that the doubt referred to may arise from all of the evidence.

3. It fails to charge that in order to convict the jury must be satisfied beyond a reasonable doubt of the truth of the charge.

4. It limits the creation of the doubt that would require acquittal to the evidence produced by the prosecution in support of the indictment.

5. It requires the doubt referred to to be of such character and nature that the jurors would act upon it rather than to pause and hesitate before acting.

(g) As to credibility of witnesses, the instruction is defective in that:

1. It fails to outline the tests which credibiltiy of witnesses may be gauged by the jurors.

2. It fails to instruct that the jurors are the sole judges of the weight to be given to the testimony of the several witnesses.

3. It fails to instruct that where the jury finds that a witness has wilfully or wrongfully testified falsely upon a material fact, his or her testimony may be disregarded in whole or in part.

(h) As to "wilfulness," the instruction is wholly inadequate, is misleading and in confusing in that:

1. It fails to properly define the term.

2. It fails to charge that wilfulness requires a specific wrongful intent to conceal a tax obligation known to exist.

(i) The Court wholly failed to instruct the jury upon the appellants' theory of the case.

(j) The Court wholly failed to instruct the jury that if it believed that the increase in net worth as due to prior accumulations of assets on the part of the appellants, it was its duty to acquit.

(k) The Court wholly failed to instruct the jury upon the essential elements of the proof required to be established under the net worth theory of proving a wilful evasion of income taxes under Section 145(b) of 26 U. S. C. A.

(l) The Court's charge that the falsity of the income tax returns was not an issue for determination by the jury misinterprets the issues presented by the crime charged in the indictment and the pleas of not guilty.

(m) The Court's charge to the jury, as a whole, deprived appellants of a fair and impartial trial in that:

1. It had the effect of determining and resolving the credibility of the witnesses and the weight to be given to their testimony, as a matter of law.

2. It decided and determined for the jury that the crime charged in the indictment had been proven, as a matter of law, and had the effect of shifting to the appellants the burden of proving innocence.

3. It was argumentative and presumptive in favor of the appellee; it emphasized the evidence produced by the appellee and minimized the evidence produced by the appellants; it assumed and presented facts not in evidence; it ridiculed and minimized the closing arguments of counsel for appellants.

10. The Court committed prejudicial error in refusing and denying appellants' tendered instructions 1 to 17, inclusive.

11. The Court committed prejudicial error in allowing and permitting counsel for the prosecution to use, display, exhibit and otherwise explain to the jury, in closing argument, several and divers charts, computations and calculations which had no foundation or support in the evidence, or which distorted the evidence and which remained

unidentified, unverified and not received or admitted in evidence.

12. The verdict of the jury is self-destructive.

Respectfully submitted,

ANTHONY F. ZARLENGO,
H. D. REED,
FRANK A. BRUNO.

Filed June 18, 1953.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE WILLIAM LEE KNOUS, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, AND THE HONORABLE WILLIS W. RITTER, A UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF UTAH, ASSIGNED TO HOLD THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

THE UNITED STATES OF AMERICA, PLAINTIFF,

VS.

MARION L. HOLLAND AND ETHEL E. HOLLAND
DEFENDANTS.

No. 13188.—Criminal.

Indictment

(Attempt to Defeat and Evade Income Taxes—
26 USC 145(b)).

1 The grand jury charges:

That on or about the 15th day of March, 1947, in the District of Colorado, Marion L. Holland, late of Golden, State and District of Colorado, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Colorado, at Denver, Colorado, a false and fraudulent income tax return, wherein he stated that his net income for said calendar year was the sum of $15,336.93, and that the amount of the tax due and owing thereon was the sum of $3,980.39, whereas, as he then and there well knew, his net income for said calendar year was the sum of $38,471.03, upon which said net income he owed to the United States of America an income tax of $15,688.75.

In violation of Section 145(b) Internal Revenue Code; Section 145(b) Title 26 U. S. C.

Count II.

The grand jury further charges:

That on or about the 12th day of March, 1948, in the District of Colorado, Marion L. Holland, late of Golden, State and District of Colorado, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1947, by filing and causing to be filed
2 with the Collector of Internal Revenue for the Internal Revenue Collection District of Colorado, at Denver, Colorado, a false and fraudulent income tax return, wherein he stated that his net income for said calendar year as the sum of $5,717.57, and that the amount of tax due and owing thereon was the sum of $851.74, whereas as he then and there well knew, his net income for said calendar year was the sum of $34,631.97, upon which said net income he owed to the United States of America an income tax of $13,846.99.

In violation of Section 145(b) Internal Revenue Code; Section 145(b) Title 26 U. S. C.

Count III.

The grand jury further charges:

That on or about the 12th day of March, 1949, in the District of Colorado, Marion L. Holland and Ethel E. Holland, late of Golden, State and District of Colorado, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by them to the United States of America for the calendar year 1948, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Colorado, at Denver, Colorado, a false and fraudulent joint income tax return, wherein they stated that their net income for said calendar year was the sum of $10,211.42, and that the amount of tax due and owing thereon was the sum of $1,532.52, whereas as they then and there well knew, their income for said calendar year was the sum of $29,948.16, upon which said net income they owed to the United States of America an income tax of $7,518.88.

In violation of Section 145(b) Internal Revenue Code; Section 145(b) Title 26 U. S. C.

A True Bill:

GARRETT W. CRAIG,
Foreman.
CHARLES S. VIGIL,
United States Attorney.

Filed May 12, 1952.

Arraignments and Pleas.

4 The District Attorney appears for the United States and the defendants in their own proper persons and by Anthony F. Zarlengo and Frank A. Bruno, their attorneys, also come.

And the defendants now being arraigned, each for himself and not one for the other, waives the reading of the Indictment and pleads not guilty to the first, second and third counts of the Indictment.

Thereopon, it is ordered by the court that the defendants have fifteen (15) days from this day within which to file motions, and that the bail bonds heretofore given by the defendants shall continue in force and effect until the further order of the court.

Entered on the Docket May 21, 1952.

Motion to Dismiss.

5 Comes now the defendants above-named by their attorneys, Anthony F. Zarlengo and Frank A. Bruno, and respectfully move this Honorable Court for its order dismissing and quashing the Indictment in this cause, and each of the several and divers counts therein contained, and as grounds therefor would show:

1. That the said Indictment, and the several and divers counts therein contained, failed to state facts sufficient to constitute an indictable offense within the meaning of any law or statute of the United States and particularly Section 145(b) of the Internal Revenue Code, Title 26 U. S. C.

2. That the said Indictment, and the several divers counts therein contained, failed to state facts sufficient to constitute the indictable offense of attempting to defeat and evade income taxes as defined by Section 145(b), Title 26 U. S. C.

ANTHONY F. ZARLENGO,
FRANK A. BRUNO,
Attorneys for Defendants.

Filed June 5, 1952.

Order Overruling Motion of Defendants to Dismiss.

7 This matter having heretofore come on for hearing on the Motion of the defendants to Dismiss, and having been argued by counsel and by the Court taken under advisement, it is

Ordered that the Motion of the defendants to Dismiss be overruled.

Entered on the Docket September 11, 1952.

Motion to Join Two Cases for Trial.

8 Comes now Charles S. Vigil, United States Attorney for the District of Colorado, and moves that the two above-entitled cases be consolidated for trial, and as grounds therefor, respectfully states and shows unto the Court:

1. That in counts one and two of the indictment in Case No. 13188, the defendant, Marion L. Holland, is charged with attempting to defeat and evade a large portion of his income tax for the years 1946 and 1947 respectively; that in the third count of said indictment, the defendants, Marion L. Holland and Ethel E. Holland, are charged jointly with attempting to defeat and evade a large part of their income tax for the year 1948.

2. That in the first count of the indictment in Case No. 13187, the defendant, Ethel E. Holland, is charged with aiding and assisting in and counseling, procuring, and advising the preparation and presentation to the Collector of

Internal Revenue of a false and fraudulent income tax return of Marion L. Holland for the calendar year 1946; that in the second count of said indictment, the defendant, Ethel E. Holland is charged with aiding and assisting in and counseling, procuring, and advising the preparation and presentation to the Collector of Internal Revenue of a
9 false and fraudulent income tax return of Marion L. Holland for the calendar year 1947.

3. That said Case No. 13187 charged the defendant, Ethel E. Holland, with aiding and assisting in and counselling the preparation and presentation to the Collector of Internal Revenue of Income tax returns of Marion L. Holland for the years 1946 and 1947, which are the same income tax returns with which the defendant, Marion L. Holland, is charged in counts one and two of the indictment in Case No. 13188, with filing with the Collector of Internal Revenue in an attempt to defeat and evade income taxes for the calendar years 1946 and 1947.

4. That the offenses and the defendants in each of said cases Nos. 13188 and 13187 could have been joined in a single indictment.

Dated at Denver, Colorado, this 24th day of February, 1953.

CHARLES S. VIGIL,
United States Attorney for the
District of Colorado.

Filed Feb. 24, 1953.

Order Granting Motion to Join Two Cases For Trial.

10 This matter coming on to be heard upon the Motion of the plaintiff to Join Two Cases for Trial, and the Court having heard the arguments of counsel and being fully advised in the premises, it is

Ordered that the Motion of the plaintiff to consolidate this case with Criminal Case No. 13187, The United States of America vs. Ethel E. Holland, for trial to the jury, be granted, and that the renewal of the Motion of the defendants to Dismiss be denied.

Entered on the Docket March 2, 1953.

Verdict.

11 We, the jury in the above entitled case upon our oath do say we find the defendant, Marion L. Holland not guilty and we say we find the defendant, Ethel E. Holland not guilty as charged in count one of the Indictment, and

We say we find the defendant, Marion L. Holland not guilty and we say we find the defendant, Ethel E. Holland not guilty as charged in count two of the Indictment, and

We say we find the defendant, Marion L. Holland guilty and we say we find the defendant, Ethel E. Holland guilty as charged in count three of the Indictment.

ERWIN J. HOWARD,
Foreman.

Filed March 6, 1953.

Judgment and Commitment, Marion L. Holland.

12 On this 22nd day of April, 1953 came the attorney for the government and the defendant appeared in person and by Frank A. Bruno and Anthony F. Zarlengo, his counsel,

It is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty upon count 3 of the offense of attempting to defeat and evade income taxes in violation of Section 145(b), Title 26 U. S. C. as charged in the Indictment herein and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years upon count 3 of the indictment herein.

It is further ordered that the defendant pay to the United States of America a fine of Ten Thousand Dollars ($10,-

000.00), and that he stand committed to a common jail until payment of said fine, or until he is otherwise discharged as provided by law.

It is further ordered that the defendant be and he hereby is granted a fifteen (15) day stay of execution, and that his present bond be continued.

Is Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

WILLIS W. RITTER.
United States District Judge.

Filed April 22, 1953.

Judgment and Commitment, Ethel E. Holland.

13 On this 22nd day of April, 1953 came the attorney for the government and the defendant appeared in person and Frank A. Bruno and Arthur F. Zarlengo, his counsel,

It Is Adjudged that the defendant has been convicted upon her plea of not guilty and a verdict of guilty as to count 3 of the offense of attempting to defeat and evade income taxes in violation of Section 145(b), Title 26 U. S. C. as charged in the Indictment herein, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay to the United States of America a fine of Five Thousand Dollars ($5,000.-00), and that she stand committed to a common jail until payment of said fine, or until she is otherwise discharged as provided by law.

It is further ordered that the defendant be and she hereby is granted a fifteen (15) day stay of execution, and that her present bond be continued.

Is Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

WILLIS W. RITTER,
United States District Judge.

Filed April 22, 1953.

No. 13188.

Notice of Appeal.

16 Comes now the defendants, Marion L. Holland and Ethel E. Holland, and in accordance with and pursuant to Rule 37 of the Federal Rules of Criminal Procedure, and give notice of his or her and their appeal to the Court of Appeals for the Tenth Circuit, of that certain judgment of conviction entered April 22, 1953, as follows:

1. That the name of the appellant is Marion L. Holland, whose address is the Holland House, in the City of Golden, County of Jefferson, State of Colorado.

2. That the name of the appellant is Ethel E. Holland, whose address is the Holland House, in the City of Golden, County of Jefferson, State of Colorado.

3. That the names and addresses of the appellants' attorneys are as follows: A. Anthony F. Zarlengo, 505 Symes Building, Denver, Colorado. B. H. D. Reed, 515 Majestic Building, Denver, Colorado. C. Frank A. Bruno, 515 Majestic Building, Denver, Colorado.

4. That the appellants', and each of them, were charged in Count III of an Indictment with wilfully and knowingly attempting to defeat and evade a large part of the income tax due and owing by them to the United States of
17 America for the calendar year 1948, by filing or causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Colorado, at Denver, Colorado, a false and fraudulent income tax return, wherein they stated that their net income for the calendar year was the sum of $10,211.42, that the amount of tax due and owning thereon was the sum of $1,532.52, where-

as they then and there well knew, their net income for said calendar year was the sum of $29,948.16 upon which said net income they owed to the United States an income tax of $7,518.88 in violation of Section 145(b) Internal Revenue Code; Section 145(b), Title 26 U. S. C.

5. That a verdict of guilty against both appellants was returned by a jury on March 6, 1953; that on the 22nd day of April, A. D. 1953, the Honorable Willis Ritter, Judge of the United States District Court for the District of Utah, sitting specially in the United States District Court for the District of Colorado, accepted said verdict of the jury and sentenced the appellants as follows:

a. With respect to the appellant, Marion L. Holland—Two (2) years imprisonment and $10,000.00 fine.

b. With respect to the appellant, Ethel E. Holland—$5,000.00 fine.

6. That execution upon said judgment of conviction has been stayed; that the appellants, and each of them, are now at liberty on bond, all by order of Court.

7. The appellants, feeling aggrieved of the verdict of the jury, the judgment rendered thereon and the sentence imposed, and having been advised that serious, grievous and reversible error exists in the record of said case, do appeal from said verdict, judgment and conviction to the Court of Appeals for the Tenth Circuit.

ANTHONY F. ZARLENGO,
H. D. REED,
FRANK A. BRUNO,

Filed April 24, 1953.

[Appearance bonds were filed April 28, 1953.]

Transcript of Trial Proceedings.

Before: The Honorable Willis W. Ritter, Judge of the United States District Court For the District of Utah.

Appearances: Mr. Charles Vigil, U. S. District Attorney,

and Mr. Clifford C. Chittim, Assistant U. S. District Attorney For the Government. Mr. Frank A. Bruno, Mr. Anthony F. Zarlengo, Mr. H. D. Reed, Attorney at Law, For the Defendants.

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Motions by Defense Counsel Prior to Commencement of Trial, Held in the Court's Chambers.

29 Mr. Bruno: If your honor please, these people are husband and wife. They have operated what is now known as the Holland Hotel at Golden, Colorado. They started that operation on April 1st, 1946, and are at it now. The last grand jury indicted Marion L. Holland and Ethel E. Holland in one indictment, which contains three counts. The first two counts deal specifically with Marion L. Holland, alone, Judge Ritter, for the year 1946 and the year 1947. In the third count, the indictment joins Ethel E. Holland and Marion L. Holland, her husband, for the year 1948.

We have heretofore moved to quash that indictment on the ground that there was a misjoinder of parties under Rule 8 of the Rules of Criminal Procedure. We argued that before Judge Knous, and filed with him at that time a memorandum brief of authorities. Judge Knous overruled our motions to quash, and gave us permission at that time, as I remember, to renew those motions at the time of the trial. We would like, if your honor please, to renew those motions at this time for the reasons that we stated in that memorandum brief. By the way, Judge, that memorandum brief I think is a part of that file. I don't know whether your honor is acquainted with it or not. But on this question of the joinder of these two people, the case has been pending now for seven or eight months in this court. The U. S. Attorney knew what our position was with respect to this misjoinder of parties. They
30 didn't serve us with a copy of this motion for joinder until last week. We are at this time prepared to try, and that's the way my preparation of this case has followed in Mr. Zarlengo's absence from the city, I am prepared to try either of those cases today. I have not prepared to try them jointly.

The Court: They were charged jointly?

Mr. Bruno: In one indictment, your honor. We take the position that there will be perjudice running to these defendants if the court allows this joinder at this time. We feel strongly about that with respect to Ethel Holland. The whole case will depend upon whether Marion L. Holland has done the things that they claim he has done in the first two counts of the indictment. We feel that if the court should join those two, then the proof as against Ethel Holland may take such a turn as would prejudice her rights in this case.

We feel of course, if your honor please, that this question of joinder is absolutely within your honor's discretion. We make no point of that. We do feel, however, Judge Ritter, that where there is any doubt at all in the court's mind with respect to whether or not there should be a joinder of these, your honor should resolve that doubt and exercise that discretion in the favor of these defendants. We respectfully request from your honor that the motion to join these cases for trial be denied at this time.

The Court: Well it seems strange to me that we
31 could not by Instruction carefully separate these cases for the jury so as to prevent any prejudice. This man and this woman are husband and wife, and if she has participated in any way, that proof will stand distinctly from what he did. I think we can handle by Instruction any difficulty you might feel about prejudice.

Mr. Bruno: May I point out one more thing?

The Court: Yes.

Mr. Bruno: The Government in this case, your honor, is trying to do by this joinder what they could not do directly. They could not have joined Ethel Holland in Counts 1 and 2 of the indictment against her and her husband. The rule would prohibit that. They are now attempting by this joinder to do indirectly what they could not do directly. I meant to call that to your honor's attention, but that I believe is a rather strong argument towards your honor's resolving whatever doubt you would have in this matter with respect to this joinder.

Mr. Chittim: If the court please, that may be technically true, but I don't think it's true in the general way in which it might be interpreted. We could have put another count—

The Court: You don't need to talk like that. As a matter of fact, it's question of charging, and you might have charged her on a separate count. As a matter of fact, the only question here is whether these two cases should be consolidated for trial. Now I wouldn't consolidate them for trial if I thought that somebody was going to be
32 prejudiced by that consolidation. I don't feel that anybody is going to be prejudiced. We can handle by Instruction any difficulty you feel about that. You haven't indicated anything to me that shows any prejudice that appeals to my mind.

The matter comes on on the Government's motion to consolidate the two for trial, and that motion will be granted, and I have no intention of overruling Judge Knous's ruling on your motion.

Mr. Bruno: On the motion to dismiss?

The Court: The motion to dismiss will be overruled. So are we ready to proceed?

Mr. Bruno: Yes, your honor. I think the record does show, I take it now, that we have renewed our motion to dismiss at this time?

The Court: Yes, the record so shows, and the record also shows that I have denied the motion to dismiss.

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50 George J. Heft, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—A. George J. Heft.

Q. Where do you live?—A. 2850 Albion, Denver, Colorado.

Q. What is your occupation, or work?—A. I work for the Internal Revenue Service, in the office of the Director.

Q. What is your official position there?—A. I am head of the Returns Processing Branch.

Q. Does your office have custody of the income tax returns filed for the district of Colorado?—A. Yes, it does.

Q. Have you at my request searched your records for returns made by the Defendants, M. L. Holland and Ethel E. Holland, for the years 1946, '47, and '48?—A. I have.

Q. Did you bring those with you?—A. I did.

Q. I hand you an instrument which has heretofore been marked for purposes of identification as Government's Exhibit A, and ask you if that came from your file?—A. Yes, it did.

Q. And what is it?—A. This is a United States
51 Individual Income Tax Return, Form 1040, and filed in the name of Marion L. Holland.

Q. For what year?—A. Calendar year 1946.

Q. I hand you an instrument which has been marked for identification as Government's Exhibit B and ask you if that came from your files.—A. This is a United States Individual Income Tax Return for the Calendar Year 1947, Form 1040, filed in the name of Marion L. Holland.

Q. And that came from your files?—A. Yes, it did.

Q. I hand you an instrument marked for purposes of identificaton as Government's Exhibit C and ask you if this came from your files?—A. Yes, it did.

Q. Will you state what it is?—A. This is a United States Individual Income Tax Return for the Calendar Year 1948, filed in the names of Marion L, and Ethel E. Holland. It's a Form 1040.

Mr. Chittim: I move the admission into evidence of Government's Exhibit A, B and C.

The Court: There can't be any objections to those?

Mr. Zarlengo: I just want to ask a few questions on the 1946 return, your honor.

The Court: Yes.

Voir Dire Examination by Mr. Zarlengo.

52 Q. Mr. Heft, handing you Government's Exhibit A, which is the 1946 return— —A. Yes?

Q. Was there an amended return filed for 1946?—A. Not to my knowledge.

Q. Have you checked your records to determine whether or not— —A. Yes, sir. These were the only returns.

Q. —an amended return was filed?—A. Not to my knowledge.

Q. And you say you found none?—A. That's right.

Q. Isn't it a fact that if additional tax was paid on the 1946 return, your records would reveal it?—A. My records would reveal it.

Q. Would you check your records to see?

The Court: Well, that wouldn't go to the admissibility.

Mr. Zarlengo: The only thing I had in mind, your honor, was that if there as an amended return we ought to have it so the '46 return would be complete, and the reason we want to show the additional tax is that additional tax was paid.

Q. The check is dated January 22nd, 1951, if that may help you.—A. Well, I didn't search those years, sir.

53 Q. You didn't search. Will you check your records to determine whether or not on January 22nd, 1951, an additional tax of $2,363.17 wasn't paid on the 1946 return?—A. All right.

The Court: All right. You will search your records and look for that matter. Is there any objection to the introduction of A, B and C.

Mr. Zarlengo: No, there is not, your honor.

The Court: All right. They will be received.

Continued Direct Examination by Mr. Chittim.

Mr. Chittim: May I pass those exhibits to the jury?

The Court: Yes.

Q. You were requested by me to search your records for the years 1946, '47, and '48, were you not?—A. Yes.

Q. Now, Mr. Heft, let me ask you this. Do you have custody of the records of the payments made on income tax returns?—A. Yes, we do.

Q. Did you, at my request, bring with you your records which show the payments made in the years 1946, 1947, and

1948, on income tax returns, by the Defendants, M. L. Holland and Ethel E. Holland?—A. I brought a certificate showing the payments. I didn't bring the records.

Q. That certificate is prepared from the records?—A. Correct.

54 Q. And you prepared that?—A. I had it prepared.

Q. Under your direction?—A. Yes, sir.

Q. Turning to those certificates, can you tell us what income tax was paid during the—for the year 1946? Paid during the year 1946.—A. My records show two payments in 1946, one of one thousand dollars, and one of five hundred dollars.

Q. Now what do your records show with regard to income tax payments made during the year 1947?—A. Shows one payment of tax in 1947 of $3,487.00, and a credit carried forward from the previous year of $997.16.

Q. What do your records show with regard to payment of income taxes by the defendants during the year 1948?—A. Shows one payment of $768.69. The credit of $997.61 which was carried forward, and then a refund of $914.56.

Mr. Chittim: You may examine.

Cross Examination by Mr. Zarlengo.

Q. Mr. Heft, as I understand it, your records show that on the 1946 income tax return there were two payments made, is that right?—A. Yes, sir.

Q. One for one thousand dollars and one for five hundred dollars?—A. Yes, sir.

55 Q. And you're going to check your records to determine this additional payment that I mentioned a moment ago?—A. Yes. I'd like to have the check—the numbers off of the check, so I can check my records.

Mr. Zarlengo: Yes, we have the records right here. The check is dated January 22nd, 1951. Number 2085.

Q. And when you have that information you'll bring it into the court?—A. Yes, sir.

Q. And also any amended returns that may have been filed?—A. Yes, sir.

Q. Now, then, in 1947 there was a payment made of $3,478.00, is that right?—A. That's correct, sir.

Q. And did that constitute an overpayment of the tax due during that year?—A. Well it resulted in an overpayment.

Q. In other words, during the year 1947 Mr. Holland overpaid the tax due by $997.61, is that right?—A. Yes, sir.

Q. And as a result of his overpaying the tax that was due, he got a credit on the next year?—A. Credit on the estimated amount for the next year.

Q. So in the year 1948 they gave him credit for the overpayment he made, and then he paid an additional amount of $768.69 in cash, is that right?—A. Yes, sir.

56 Q. And these returns that were filed were accepted by the Government, were they not?—A. We accept all returns that are filed.

Q. I notice some stamps that are marked on there—"Accepted" Who puts those stamps on there?—A. Well I believe there is only one of those in the year 1946, isn't there, sir?

Q. May I borrow those just a moment, please? Just a second. Well, we'll take the 1946 return. I notice a stamp on here—"Accepted."—A. Well, that "Accepted" means that we've gone over it with the mathematical verification and found no obvious errors, so the processing group passed it through to the auditor.

Q. And then on the top of the 1946 return I notice "Computation Approved."—A. That's the comptometer operator.

Q. And that has been approved by whoever did the computation?—A. Oh yes.

The Court: Well now explain that. I don't understand what you're talking about there. What happens?—A. Well when the return came to our division it was given to the comptometer operator, who added the columns of figures shown on the return.

The Court: Well they add and subtract to see if the addition and subtraction is correct, but does that signify
57 approval or acceptance in any other sense?—A. No other sense at all.

Q. In other words, the figures have been approved so that there is no error in addition, or subtraction, or so forth?—A. No obvious errors.

Q. And on the '47 and '48 returns the same thing is true, is it not?—A. Except that we did not use the "Accepted" stamp.

Q. At that time you started using the "Computation Approved" stamp?—A. Yes, sir.

Q. You eliminated using the "Acceptance" stamp?—A. That's right.

Q. Well then in 1948 the Government made a refund to Mr. Holland, did they not?—A. Yes, sir.

Q. How much of a refund was made?—A. On April 9th, 1948, a refund of $914.56.

Q. And that represented an overpayment of tax that he made in '48 did it not?—A. Yes, that's right.

Mr. Zarlengo: That's all.

Re-Direct Examination by Mr. Chittim.

Q. Can you tell from your records what the nature of that overpayment was?—A. Well the nature of the overpayment was the $997.61, which was brought forward
58 as a credit from the year before, and when added to the $768.69, resulted in an overpayment of $914.56.

Q. Did that involve any complete review—thorough review—of the income tax?—A. None whatsoever. Merely from the mathematical computation.

The Court: That is to say, taking the taxpayer's own reported figures, he made a mistake against himself, is that it?—A. Yes, sir. In the previous year he had made that mistake and it was carried over.

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GLENN W. DAVIS, a witness for the Government was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

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Q. Where do you live?—A. 2585 Grape Street.

Q. What is your occupation or profession?—A. Banker.

Q. And where are you employed?—A. In the U. S. National Bank, Denver.

Q. In what capacity?—A. Assistant Cashier.

59 Q. Did you at my request bring your records of the checking account of M. L. Holland for the years 1945, '46, '47, and '48?—A. I brought the checking account balance at the end of the year.

The Court: I can't hear what you're saying.—A. I brought the balances of the checking account for the end of the year for each year, '46, '47, and '48.

Q. In what form are your records, Mr. Davis?—A. Our records themselves are on a record account film, which I had a photostatic copy made of it. The record is kept on film.

Q. Did you at my request make a photostatic copy of the year-end balance of that checking account for each of those years?—A. I did.

Q. Do you have that with you?—A. Yes, sir.

Q. Will you look at that and tell us what the year-end balance of the account of M. L. Holland for the year 1945 was?—A. The year-end '45, checking account balance $2,064.18.

Q. And now for the year 1946?—A. The year-end balance was $10,169.63.

Q. Now for the year 1947?—A. $130.70, for the year-end balance of '47.

Q. Now for the year 1948?—A. Year-end '48,

60 $439.50.

Q. Have you at my request produced your loan-record accounts on M. L. Holland for those same years?—A. I have.

Q. Now are those in the same form as the other records?—A. No, sir. We have a regular ledger sheet on the loan balances.

Q. Will you turn to those records, and from those can you tell me the year-end balance on the loan account, showing the amount owed by Mr. Holland to the bank at the end of the year 1945?—A. The year-end liability of M. L. Holland at the end of 1945 was $11,703.84.

Q. Now will you do the same thing for the year 1946?—A. Mr. M. L. Holland did—I beg your pardon. Year end '46? In December 31, '46, Mr. M. L. Holland owed us $25,000.00.

Q. Now for the year-end 1947?—A. Year-end 1947 was $15,000.00

Q. Now for the year-end of 1948?—A. Mr. Holland did not owe us any money, according to my records, at the year-end of '48.

Q. Do you have with your loan account for the earlier period, 1942 to 1945?—A. Yes, sir.

Q. Will you teli us in what form they are? May I see them?—A. Form of a liability ledger sheet.

Q. What period does that cover?—A. This covers
61 '42 to '46—part of '46. The rest of '46 is on another sheet.

Q. And does that show an active loan account during that period?

Mr. Bruno: If your honor please, we object to all questions concerning the loan account prior to 1946 because it covers periods not covered in the indictment.

The Court: This is a net-worth case. You people are going to urge pretty soon—you already did in your opening statement—that he had funds, had prior capital, through the years in question. So it's highly material to go into this matter. The objection is overruled.

Q. I show you an instrument which has been marked Government's Exhibit D for purposes of identification, and ask you to tell me what that is.—A. That's the liability ledger sheet of Mr. M. L. Holland. Starts in January, '42 and runs up to February, '46.

Q. That is part of the official records of your bank?—A. That's right.

Mr. Zariengo: We have no other objection than the one we have already made.

The Court: Objection will be overruled. You will offer it, I suppose, Mr. Chittim?

Mr. Chittim: I offer it in evidence, and request the privilege of substituting a copy.

The Court: It will be received, and you may substitute the copy and return the original to the bank.

62 Q. Do you have the copy with you?—A. Yes, sir.

Q. Now, Mr. Davis, do your records show whether these loans were secured by collateral?—A. Yes, they show.

Q. Does it show on that sheet, or do you have a separate collateral account?—A. Well it shows on this sheet, and I also have a separate collateral account.

Q. Were those loans secured by collateral?—A. Yes, sir.

Q. In all instances?—A. Yes, sir.

Voir Dire Examination by Mr. Zarlengo:

Q. Mr. Davis, you have stated that each and every loan that was made was secured by collateral, is that right?—A. According to my records, yes, sir.

Q. And do you have a record of the collateral that was put up?—A. Yes, sir.

Q. Well we'll take the year-end balance of 1945. You stated that Mr. Holland owed the bank at that time $2,064.18. Now what collateral was put up on that loan?—A. Year-end '45?

Q. 1945. Oh, pardon me. I had the other accounts. Now you show a balance of $11,703.84, is that correct? What collateral was put up on that loan?—A. It was secured

63 by stock.

Q. What kind of stock? What company?—A. Well, I'll have to figure it out here. If you want the separate ones, we have a running collateral account. It's drawn out and marked off, and as new is received, it's added to it. To determine what collateral secured that one loan, I'd have to figure it out.

Q. Well can you give us the collateral that was put up on that running account?—A. Yes.

Q. All right. Let's have it.—A. It don't all secure any one loan at any one time, but it secured the various loans at different times.

Q. What collateral was put up to secure these loans?—A. We had Southern Pacific Company common stock.

Q. How many shares?—A. Three hundred.

Q. Do you know when that stock was acquired?—A. We acquired it—I don't know when it was acquired. I know we took it as collateral.

Q. But you don't know when Mr. Holland acquired it? —A. No.

Q. Three hundred shares of Southern Pacific common? —A. That's right.

Q. When did you acquire that?—A. January 3rd, 1942.

Q. All right. What other stock?—A. Next, Mid-
64 land Steel Products Company common. Two hundred shares.

Q. When did you acquire that?—A. May 27th, '42.

Q. All right.—A. Curtis Publishing Company common, two hundred shares. Acquired the same date.

Q. All right.—A. Nash-Kelvinator Company, one hundred shares, acquired the same date. Commercial Credit Company, one hundred shares, acquired the same date. Columbia Broadcasting Company, evidently Series A, one hundred shares, "A" in quotation marks. That was acquired by us July 31, '42. Midland Steel Products Company common, a hundred shares. Received by us on December 29th, 1942. Twentieth Century Fox Film Corporation common, one hundred shares. Received by us January 25th, '43. Midland Steel Products Company, one hundred shares, received July 27th, '43. Twentieth Century Fox, one hundred shares, July 27th, '43.

Q. Well now pardon me just one second, Mr. Davis. Some of these represent the same stock that you gave before, is that right, or are these additional shares?—A. As far as I could see, this shows Midland Steel—

Q. These are additional shares, are they?—A. Just a moment. You see, if the customer paid off the loan he may withdraw the collateral and put it up later on.

65 Q. Well, do you know if these shares are additional shares to the ones you mentioned before?—A. I'll have to compare the numbers. This Midland Steel that we had before was a different number from the Midland Steel that we received on December 29, 1942.

Q. So that was additional Midland Steel that was put up?—A. Yes. Different stock at least. That's right. Wait a minute. Just a minute here. Yes. That was additional stock.

Q. Very well. You may go ahead. I didn't mean to interrupt you. I just wanted to be sure that it was additional stock. —A. Where did I stop?

Q. You stopped at Twentieth Century Fox, 2/7/43.—A. Midland Steel Products Company, three hundred shares, received December 21, 1943. Looks like a part of it was what we had before.

Q. Part was what you had before, and part was additional?—A. Looks like that. No, sir. We had it all in here before.

Q. So this is the same Midland that you referred to before? The same three hundred shares?—A. Yes, sir.

Q. All right.—A. January 6th, '44, we received four hundred shares of Twentieth Century Fox Film Corporation. Looks like it was in addition to what we had before.

Q. All right.—A. On March 6th, '44, we received a hundred shares of Twentieth Century Fox Film Corporation. Different stock than we had before. On September
66 5th, '44, we received five hundred shares of United Gas Improvement Company common. September 5th, '44, we received a thousand shares of Commonwealth & Southern Corporation common.

Q. How many shares?—A. One thousand.

Q. All right.—A. October 13th, '44, we received 50 shares of United Gas Improvement Company capital stock. October 28th, '44, we received one hundred shares of Certainty Products Corporation.

Q. What was the name of that company?—A. It don't sound right on here. Certainty Products Corporation, of America. November 8th, '44, we received six hundred shares more of the same stock. On May 1, 1945, we received two hundred shares of Twentieth Century Fox Film Corporation, and on the same date we received one hundred shares of Sinclair Oil Corporation common. On December 14th, '45, we received a hundred shares of Sinclair Oil Corporation common. How far do you want me to go?

Q. I wanted to get down to January 1, 1946.—A. We're down to there now.

Q. We're down to that point?—A. Yes, sir.

Q. Now, then, as I understand it, you don't know when Mr. Holland acquired any of these stocks that he placed with your company?—A. No, I could not tell you.
67 Q. You simply gave us the dates that you received it as collateral on these loans?—A. That's right.

Continued Direct Examination by Mr. Chittim.

Q. Now, Mr. Davis, do your records show whether there was collateral back of these loans in '46, '47, and '48?—A. They do.

Q. And what was the collateral in those years?—A. Secured by first trust deed, and assignment of life insurance.

Q. Was there any other collateral used during those years?—A. What years are these now?

Q. '46, '47, and '48.—A. Well, the early part of '46 there was other collateral.

Q. Will you tell me what those were?—A. Secured by stock in early '46. On January and February.

Q. All right. And subsequent to that time, it was secured by what?

The Court: Well now let's do this in an orderly way. Go on the way you were before. Give us all the collateral that secured the loans, if any, commencing at the beginning of 1946 and going as far as counsel asked you about. Do you understand what I mean?—A. Yes, sir.

The Court: Start at the first of the year '46 and go forward now, and tell me what collateral was secured by
68 the loan, if any. That's what counsel is asking you about.—A. One loan was secured by stock in the year '46.

The Court: Well what was the stock? Go ahead and list it.—A. Well it's the stock that I had previously read off to determine which issues were in there at that time. I would have to check all my records.

The Court: Well do you have your records with you?—A. Yes, sir.

The Court: Well go ahead.

Q. Will you give us the date too that you acquired it?—A. I'll have to work backwards here. On loans that we had during the year 1946, we had up as collateral a hundred shares of Sinclair Oil Corporation common, acquired by us on December 14th, '45. We had one hundred shares of Sinclair Oil Corporation common and two hundred shares of

Twentieth Century Fox Film, acquired by us May 1, '45. Had another hundred shares of Twentieth Century Fox Film Corporation, acquired by us on March 6th, of '44. Another four hundred shares of Twentieth Century Fox Film Corporation, acquired by us on January 6th, '44.

Q. Now, then, are these for loans in '46?—A. Yes, sir. We had three hundred shares of Midland Steel Products Company common, acquired by us on December 21st, '43. We had one hundred shares of Midland Steel Products Company common, acquired by us on May 27th, '42. To the best of my knowledge, that is the stock securing loans secured by stock during 1946.

69 Q. Was there any stock securing any of these loans after April of 1946?—A. No, sir.

Mr. Chittim: You may enquire.

Cross Examination by Mr. Zarlengo.

Q. Mr. Davis, will you examine your records to determine if these stocks were not sold during the early part of '46, and the U. S. National Bank got some eleven thousand dollars that was owing and due, and the balance deposited to Mr. Holland's account?—A. The loans the U. S. National Bank secured by stock were paid off in February 27th, '46.

Q. And what was the balance on that date?—A. Five hundred dollars.

Q. Five hundred dollars?—A. Yes, sir.

Q. Do you know whether or not some of the proceeds from the sale of the stock was deposited in Mr. Holland's account?—A. I don't know.

Q. You don't have those records with you?—A. Just a moment.

Q. Mr. Davis, I hand you what has been marked for identification purposes as Defendant's Exhibit 1. Will you look at that and state what that is, please?—A. That is a copy of our liability ledger sheet Mr. Marion L. Holland, January 3rd, 1942 to February 27th, 1946.

Q. These are part of these records that you've been discussing here this afternoon?—A. Yes, sir.

Q. And on the reverse side of that is that your name, "Glen Davis, 2/26/53?"—A. Yes, sir.

Q. And how about the second page there that also
70 bears your signature and the date?—A. Yes, that's a copy of our liability ledger sheet.

Mr. Zarlengo: If your honor please, at this time we offer in evidence Defendant's Exhibit 1.

The Court: Has it been marked?

Mr. Zarlengo: I just had it marked as Exhibit 1.

Mr. Chittim: Is this the same as we introduced, Mr. Zarlengo?

Mr. Zarlengo: I don't know. I imagine if it's the same dates, I imagine it's the same.

Mr. Chittim: No objection, your Honor.

The Court: It will be received.

Q. Directing your attention to the bottom of the page on Defendant's Exhibit 1, Mr. Davis, I think the date is January 28th, 1946. It shows a balance of $11,703.84?—A. Yes, sir.

Q. And was that amount paid off on that date?—A. No. It was renewed on that date.

Q. The loan was renewed on that date?—A. Yes, sir.

Q. And later it shows a payment of five hundred dollars, doesn't it?—A. No. It shows a payment of $11,203.84, with an unpaid balance of five hundred.

Q. Now, on what date did— —A. The eleven
71 thousand? February 5th, 1946.

Q. And that left a balance of five hundred dollars?—A. Yes, that's right.

Q. And that was paid on February 27th, 1946?—A. Yes.

Q. And those are the last two entries on Defendant's Exhibit Number 1?—A. Yes, sir.

Q. The first page?—A. Yes, sir.

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GEORGE W. FERGUSON a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Q. Where do you live, Mr. Ferguson?—A. Billings, Montana.

Q. What is your occupation, or employment?—A. I am assistant cashier of the Montana National Bank.

Q. Did you at my request check your bank records for the years 1945 to 1948, inclusive, to determine whether there was an account of M. L. and Mrs. M. L. Holland in that bank?—A. Yes, sir.

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Q. And what did you determine?—A. Well, the balance—

Q. Now answer my question. What did you determine? Did they have a bank account there?—A. Yes, that's right. They did have a bank account.

Q. And did you bring those records with you at my request?—A. I did. I brought the original ledger sheets from the bank with me.

Q. Will you turn to those and tell me that the year-end balance of that account was for the year 1945? That is, December 31, 1945.—A. December 31, 1945? Balance of $88.91.

Q. Now will you do the same for 1946?—A. The balance at the end of 1946 was $12.70.

Q. For 1947? The end of '47.—A. The balance at the end of '47 was $12.70.

JOHN A. FORTUNE, a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

* * * * *

Q. Where do you live, Mr. Fortune?—A. 834 South Gaylord, Denver, Colorado.

Q. And what is your occupation, or employment?—A. Executive vice president of the First National Bank in Golden, Colorado.

73

Q. Do you know the defendant, M. L. Holland?—A. I do.

Q. Did Mr. Holland have a bank account with your bank during the years 1946, '47, and '48?—A. He did.

Q. Will you look at that bank account and tell us what the year-end balance was for 1946? That is, on December 31st, 1946.—A. $6,988.80.

Q. Now for the year 1947?—A. $5,888.41.

Q. Now for the year-end of 1948—December 31, 1948?—A. $7,663.16.

Q. Do your records show when the account was opened?—A. April 6th, 1946.

Mr. Chittim: You many enquire.

Cross Examination by Mr. Zarlengo.

Q. Mr. Fortune, you gave certain balances on the year-ends of 1946, '47, and '48. Do you know whether or
74 not on the year-end of each of these years there were any outstanding checks that hadn't cleared through the bank yet?—A. I do not.

Q. So if there were outstanding checks it might have affected these balances some, to the extent of these outstanding checks?—A. Yes.

• • • • • •

Leonard DeLue, a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—Leonard DeLue.

Q. Where do you live?—A. 3900 South Ogden.

Q. What is your present business, or occupation?—A. President of the Armored Motors Service, and half owner of it.

Q. Do you know the defendants, Ethel E. Holland and M. L. Holland?—A. I do.

Q. When did you first meet Mr. Holland?—A. In May of 1945.

Q. And what were the circumstances of that meet-
75 ing?—A. Well, I was attempting to span out the operations of the hotel—

Q. What hotel?—A. The La Ray Hotel.

Q. Located where?—A. In Golden, Colorado.

• • • • • •

The Court: Well, let's see what the answer is—A. I hired Mr. Holland as chef of the hotel.

Q. When did you hire him?—A. In May '45.

Q. And how long did Mr. Holland work for you?—A. Until about the middle of November, in '45.

Q. What was his compensation?—A. Mr. Holland was on a percentage basis in the kitchen of twenty-five percent, after cafe expenses and salaries of the kitchen help only.

Q. Was that for his personal services alone?—A. That was for himself and Mrs. Holland. She worked right along with him.

Q. Did Mr. Holland work for you at any time subsequent to this period?—A. Yes. About the first of January, in '46. We decided to take a lengthy vacation. At that
76 time I asked Mr. Holland and Mrs. Holland if they'd come back and work at the hotel during this vacation period, which they did.

Q. And how long did he work for you?—A. Well, until he took over the hotel. That was the first of April.

Q. Now under what conditions did he take over the hotel?—A. The management, you mean?

Q. You mentioned "when he took over the hotel."—A. Well when I returned from my trip, Mr. Holland made me an offer of fifty thousand dollars for one-half interest in the hotel.

Q. Now when was this?—A. That would roughly be about the latter part of March.

Q. Of '46?—A. Yes.

Q. Now go ahead.—A. And I went home that night, I believe, as I recollect, and talked it over with my wife. She said, "Let's get out of the whole thing altogether," so the next day I told Mr. Holland that, and he said, "I'll give you seventy-five thousand for the hotel proper," which didn't include a small building next door.

Q. And was the hotel sold under those circumstances?—A. I sold him the hotel, that's correct.

Q. And what was embraced in this sale?—A. Well, at the time we drew up a small memorandum. Mr. Holland was to pay ten thousand dollars, which he gave me
77 by check at that time. On April 1st we were to make a final settlement. That settlement consisted of the balance of the down payment of twenty thousand, plus four thousand dollars which covered some cash in the inventory. And at that time I believe a trust deed escrow agreement was made up, which, if I recollect correctly,

went to the U. S. National Bank with the balance of forty-five thousand dollars that he owed me.

Q. And when was that forty-five thousand dollars to be paid, according to the agreement?—A. By the end of the year.

Q. And when was it paid?—A. Sometime the latter part of April. I agreed to discount the forty-five thousand five percent if Mr. Holland would secure the forty-five thousand.

Q. And it was paid to you within a month, approximately?—A. I believe it was paid about the last day of April. I'd have to refer to my records to be sure.

Q. Now did you have any other business transactions with Mr. Holland during the year 1946?—A. Yes. This small building that we built next door housed a coffee shop. And sometime, I believe, in May, Mr. Holland came to me and told me he'd give me fifteen thousand dollars for it. He gave me five thousand dollars cash and the balance to be paid within a fairly short period of time, which was paid off in February of '47.

Q. And that deal was consummated, was it?—A.
78 That's right.

Q. And when did you say the initial payment was made? About when?—A. About the middle of May. May 18th—somewhere in there.

Q. And how was that paid?—A. By check.

Q. And when was the remainder paid?—A. Paid in February.

Q. Of what year?—A. '47.

Q. And how was that paid to you?—A. By check.

Q. At the time of that payment by Mr. Holland, did you have any conversation with him in regard to the profits that the business was making?—A. Something was said to the effect that business had doubled.

Q. Just what was said?—A. That he had netted enough to pay for the one-half interest had I stayed in partnership with him.

Q. That was all that was said at that time?—A. That was all.

Q. Where did that conversation take place?—A. At the hotel.

Q. Mr. DeLue, do you know what your profits were on this hotel for the first three months of 1946?

Mr. Bruno: To which we object, if your Honor pleases. It doesn't prove or tend to prove any of the issues
79 in this case at all.

The Court: Objection is overruled. He may answer.

A. Do you want the return as I gave it, and then the subsequent government examination? I turned in an income tax—

Mr. Bruno: Now just a moment. If your honor please, that it not responsive to this question. And I do believe, if your honor please, that they must first establish that the operations were the same under Mr. Holland as they were under Mr. DeLue before this testimony is pertinent.

The Court: It is competent to come in. You may develop what you want on cross examination. Objection overruled. You may answer.

Q. Now will you just in your own words tell us what your profits or net income on the hotel were?—A. The ordinary income after audit? $11,230.17. For January, February and March, 1946.

Mr. Chittim: You may enquire.

Cross Examination by Mr. Bruno

Q. With your honor's permission, Mr. DeLue, Mr. Holland did offer you fifty thousand dollars in cash for a one-half interest in this business, did he?—A. I presume, yes.

Q. Well did he or didn't he?—A. Yes, he offered me fifty thousand dollars for a half interest.

Q. And you turned that down?—A. That's correct.

Q. Later then it developed that he offered you
80 seventy-five thousand dollars for the hotel proper, is that correct?—A. That's right.

Q. And that included the hotel and the dining room operation?—A. That's right. But did not include the small building next door.

Q. Yes. That was being built at the time, wasn't it?—A. That's right.

Q. And that included not only the personal property contained in the building, but the building itself?—A. That is correct.

Q. And he paid you on March 19th, 1946, the check for ten thousand dollars, isn't that correct, Mr. DeLue?—A. March 19th.

Q. Yes, sir.—A. I've got March 20th. But it was ten thousand dollars.

Q. And then on April 1st he paid you twenty thousand dollars more?—A. That's right.

Q. But that was a check which you got for twenty-four thousand dollars, which included a four thousand dollar inventory?—A. For inventory in cash.

Q. Yes. And the rest of it then, Mr. DeLue, was a note and chattel mortgage for forty-five thousand dollars? Correct? At four percent interest?—A. I don't recollect what the interest was.

81 Q. And then you came to him before the end of the month, before April of 1946, and offered to cash discount this thing?—A. That is correct.

Q. And at that time Mr. Holland agreed to discount it?—A. That's right.

Q. There was a saving of some twenty-two hundred and fifty dollars, isn't that right?—A. That's right.

Q. Now, Mr. DeLue, later that year Mr. Holland bought the coffee shop that you were then erecting next door?—A. That's right.

Q. That coffee shop had been leased by you to some fine lady over there, isn't that correct?—A. Mrs. McDaniels.

Q. And that was a rather long lease on that?—A. It was three or five years. Some such thing.

Q. Yes. Now he offered to pay you five thousand dollars in cash and ten thousand dollars more in a short period?—A. That's right.

Q. So you got the five thousand dollars?—A. Right.

Q. And then you expected a note and mortgage on the balance?—A. Right.

Q. And it was paid right on time?—A. February, '47.

82 Q. Now, Mr. DeLue, you say that for the first three months of 1946 you earned at that hotel $11,023.70?—A. Right.

Q. Now, Mr. DeLue, do you know of your own personal knowlege whether or not Mr. Holland's operations were different than your own operations, right after he took over?—A. Not immediately after, no.

Q. Well shortly afterwards?—A. It changed probably some.

Q. Yes. You were specializing, were you not, Mr. DeLue, in the sale of liquors?—A. No.

Q. Were you specializing in the sale of food?—A. We had a combined hotel operation. In other words we had income from the hotel, we had income from liquor, and we had income from the cafe.

Q. Yes. Now what was your income from the liquor as compared with your income from the food sales, for the three months of 1946?—A. The cafe had a gross income of $24,509.92. The cocktail lounge had an income of $14,307.87, and the hotel had an income of $3,378.78.

Q. So that your food sales were about twice the sales of liquor, is that correct?—A. That's about right, yes.

Q. Now is it true, Mr. DeLue, that at this time you had working under the supervision of Mr. and Mrs. Holland a gentleman who was a coach at the School
83 of Mines or had been a coach at the School of Mines?—A. He worked for me, but never worked for Mr. and Mrs. Holland.

Q. Never worked under their supervision?—A. No.

Q. Is it true that after you sold the hotel to Mr. and Mrs. Holland that this gentleman opened a bar very near to Mr. Holland's hotel?—A. Yes. He opened the Golden Nugget.

Q. And the clientel of the bars you ran were pretty much the boys and girls at the school, isn't that correct?—A. There weren't any girls of the school.

Q. Well the boys of the school.—A. I wouldn't refer to them as boys because they had to be 21 years old before we could serve them.

Q. Well, these young men then.—A. That's right.

Q. And most of these young men went over there with Mr. Nabes?—A. I am sure that he lost substantial business.

Q. Mr. Holland lost substantial business as a result of that?—A. On the bar? Yes.

Q. Isn't it true that there were ads in the "Ore Digger," the college paper, that Mr. Holland did not want these college boys in and out of his place in the liquor department?—A. I never saw any if there were.

Q. Now, Mr. DeLue, you say that Mr. and Mrs.

84 Holland worked on a twenty-five percent basis of the kitchen, over and above the food costs?—A. Over and above the food costs, less the kitchen salaries, yes.

Q. And they worked from about May to November 15th?—A. That's correct.

Q. When did they come to work for you in May?—A. Exact date? I would say, as near as I can determine, it would be around May 20th or around in there. The last third of the month.

Q. Now during that time, Mr. DeLue, you kept the books of the establishment, isn't that correct?—A. Not entirely, no.

Q. Well who did keep them?—A. Mrs. Wright. Mrs. Illa Wright.

Q. Mr. and Mrs. Holland had nothing to do with those books?—A. No.

Q. At the end of every month you simply said "This is your share of it" and you turned over the cash, is that correct?—A. That's right.

Q. They never checked the books any time?—A. Oh, I think Mr. Holland and I went over food costs. Yes, definitely I am sure.

Q. Now, Mr. DeLue, you say that the Hollands came back in January of 1946?—A. That's right.

Q. Are you positive of that?—A. They were
85 there in January.

Q. Yes.—A. As to the date—

Q. Please tell us the date.—A. I don't have the date with me.

Q. You went on your vacation because you were ill, is that right, Mr. DeLue?—A. No. I was tired. Not particularly ill.

Q. Isn't it true that Mr. and Mrs. Holland left in March of '45 because Mr. Holland had gotten ill?—A. They left in November.

Q. I beg your pardon. In November of 1945 because he had gotten ill?—A. Probably so.

Q. You called him several times to come back, did you not, Mr. DeLue?

The Court: I don't see that that has any bearing in this case.

Mr. Bruno: I am trying to fix the time when he came

back. I'm trying to refresh his recollection. I am sure the witness is trying to tell the truth.—A. I don't recall how many conversations; whether it was one, or two, or three.

Q. Mr. DeLue, let me ask you a straight question.
86 Isn't it true that they came back the very last week in January of 1946?—A. Yes, that would probably be about it.

Q. You were gone six weeks, is that correct?—A. I was gone almost two months.

Q. And you did go to Florida?—A. Right.

Mr. Bruno: Thank you very much, sir.

Re-Direct Examination by Mr. Chittim

Q. Just one question. What time in 1946 did Doy Nabes open up the Golden Nugget, as you recall it?—A. Around July, or in there.

Q. How were these payments for the hotel made, by cash or by check?—A. All by check.

Q. How were the payments for the coffee shop made?—A. By check.

Re-Cross Examination by Mr. Bruno.

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87 Q. Mr. DeLue, Mr. Nabes, the coach, opened the Nugget bar in July of 1946, isn't that right?—A. That's right.

Q. That was some three months after Mr. Hol-
88 land took over?—A. About right.

Q. Mr. DeLue, do you know whether or not prices were controlled during 1946 by the Office of Price Administration?—A. Yes.

Q. On meals?—A. They were.

Q. Do you know, Mr. DeLue, of your own personal knowledge, whether food at the hotel was rationed during that period?—A. Yes, it was.

Q. Do you know, Mr. DeLue, whether or not, from your own personal knowledge, prices—set prices and a set amount of food had been set aside by the Government for the operation of this hotel?—A. That's right.

• • • • •

90 FRANK DORSEY, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination By Mr. Chittim.

Q. State your name.—A. Frank Dorsey.

Q. What is your occupation, or work?—A. I am a Sales Engineer.

Q. By whom are you employed?—A. The Southern Equipment Company, St. Louis.

Q. And what is your capacity with them?—A. I am engineer and representative.

Q. Engineer and representative?—A. Yes, sir.

Q. Did you at my request bring your records of a certain transaction with the La Ray hotel and Mr. M. L. Holland, represented by Invoice dated May 12th, 1948?—A. Yes, sir.

Q. Will you produce that invoice?

* * * * *

91 Q. As representative of the Southern Equipment Company, do you have these records in your custody, Mr. Dorsey?—A. Not usually, no.

Q. How do you have them in this instance?—A. They were sent to me by the home office.

Q. And you requested them?—A. Yes, sir.

Q. You formerly sent them to the company, did you?—A. Yes, sir.

Q. And you requested them back from the company by which you're employed?—A. I usually have a copy of the invoice, not of the ledger sheets.

Q. And those are the ledger sheets?—A. Those are certified copies of the invoice and ledger sheets.

Q. I now ask you to identify these for me. Please tell me what they are.

* * * * *

A. It's an invoice on equipment sold to the La Ray hotel.

The Court: Now don't state anything about what that document contains. Just identify what it is. Name it.

A. Yes. It's an invoice.

Q. And what else—

92 Mr. Bruno: Now just a moment, if your Honor please—

The Court: Well he's identifying the other attached documents, I suppose.

A. Invoice and the ledger sheet.

The Court: Ledger sheet of the account with whom?

A. Of the La Ray hotel in Golden, Colorado.

The Court: Yes. All right.

Q. Were these records originally in the custody of the local office?—A. A copy only of the invoice was in the custody of the local office.

Q. And you have secured the original from the home office?

The Court: Well, that's what he said.

Mr. Chittim: I now offer in evidence Government's Exhibit E.

* * * * *

94 Q. Do you know, with reference to this particular invoice, whether it is an accurate invoice of the transaction which took place?—A. Yes, sir.

Q. Is it accurate?—A. Yes, sir.

* * * * *

Mr. Bruno: If your honor please, we're going to withdraw the objection. Let him go ahead. I've changed my mind about it.

The Court: To all of the attached documents?

95 Mr. Bruno: Yes, to all of them.

The Court: All right. They'll be received.

* * * * *

Cross Examination By Mr. Bruno.

Q. Mr. Dorsey, I ask you to examine Government's Exhibit E, the last page thereof, and ask you if you see a cash payment item on that?—A. Yes, sir.

Q. And when was that cash item paid?—A. It's recorded here on July 12th. That was the time that the check was received at the home office.

Q. July 12th, 1948?—A. Yes, sir.
Q. That says "cash" doesn't it?—A. Yes, sir.
Q. And that's for $7,965.06?—A. Yes, sir.

• • • • •

Re-Direct Examination By Mr. Chittim.

Q. What do you mean by "cash"?

Mr. Bruno: Now just a moment, if your Honor please. The Exhibit speaks for itself.

96 The Court: But you examined the witness as to what that was about, so I'm going to let him find out. Go ahead. You may answer.

A. Maybe I didn't understand when you said "cash". It was a check.

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Mr. Bruno: How do you remember it was a check? Back in July the 12th, 1948, how do you remember that that was a check?—A. Because I sent it in.

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MRS. VIOLET REED, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination By Mr. Chittim.

Q. State your name.—A. Violet E. Reed.

Q. What is your employment, or work?—A. I am
97 a bookkeeper for the Carson Crockery Company.

Q. How long have you been so employed?—A. Since '42.

Q. And as such, do you make entries in the books and have custody of the books of that company?—A. Some of them. I make some of them. I have supervision over them.

Q. Have you at my request brought your records of the Carson Crockery Company, showing transactions of your company with Mr. Holland and the La Ray hotel, in July, 1948?—A. Yes, sir.

Q. Will you turn to those books, or records, and tell

us what transactions, if any, took place in the month of July, of 1948?—A. We have three invoices in the month of July.

Q. And what were those?—A. They are for bar fixtures. Purchase of bar fixtures.

Q. Are any of these in duplicate?—A. No, this blue one is our delivery slip.

Q. I hand you an instrument which has been marked Government's Exhibit F for purpose of identification, and ask you to tell me whether that came from your official records?—A. That's right.

Q. And will you tell me what that purports to be?—A. That is an invoice.

Q. For what? And to whom?—A. To the La Ray
98 hotel, for a set of glass doors.

Q. Now I hand you an instrument marked for purposes of identification as Government's Exhibit H and ask you if that also came from your official records.—A. Yes, sir.

* * * * *

Q. What is the document?—A. Invoice.

Q. To whom?—A. La Ray hotel.

Q. What date?—A. July 28th, 1948.

Q. Now I hand you an instrument which has been marked for purposes of identification as Government's Exhibit G and ask you if that also came from the official records of the Carson Crockery Company.—A. Yes, sir.

Q. What is it?—A. It's an invoice to the La Ray
99 hotel.

Q. What date is it?—A. July 28th, 1948.

The Court: Now do you offer them?

Mr. Chittim: If the court please, I offer them in evidence as acquisitions of the assets during the year involved.

Mr. Zarlengo: We object to it, your honor, on the grounds that up to this point it's immaterial. They haven't connected it up in any way. They simply come in with a number of invoices on various dates. There is nothing of probative value at this time.

The Court: Well, you can't try a lawsuit all at once, as you perhaps know better than I do.

Mr. Zarlengo: I wouldn't say that, your Honor.

Mr. Chittim: They'll be connected up, and their relevancy shown.

The Court: Well, in a net worth case they're entitled to show what assets were purchased in the period in question. Objection will be overruled.

• • • • •

Q. Did you bring with you your records which will reflect when these goods shown in these invoices were paid for?—A. Yes, sir.

Q. Will you tell us when each of those invoices were paid?—A. They were both paid on the 9th of August, 1948.

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Q. On the 9th day of August, 1948. And what was the total amount?—A. $4,283.44.

Q. Do you know of your own personal knowledge how this was paid?—A. By check.

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Fred Craig, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination By Mr. Chittim.

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Q. Where do you live, Mr. Craig?—A. Route 3, Box 262, Golden, Colorado.

Q. And how long have you lived in that vicinity?—A. About five years.

Q. Do you know the defendant, M. L. Holland?—A. Yes, sir.

Q. During, or in, or about the month of September of 1947, did you have any business transactions with him?—A. Yes, I did.

Q. Will you tell us what those transactions were?—A. I sold him some horses.

101

Q. About when? Can you place the date on which that occurred?—A. No. It was in the fall of '47.

Q. And what horses did you sell him?—A. I sold him two Palomino colts, and the mother of both of the colts.

Q. And what was the consideration for that sale?—A. A thousand dollars.

Q. How was that thousand dollars paid to you?—A. By check.

Q. When was it paid?—A. Well, it was paid when we made the deal. Right at that time. I don't know exactly the date.

Q. Very well.

• • • • •

FRED A. LANDRY, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination By Mr. Chittim.

• • • • •

Q. And where do you live, Mr. Landry?—A. Golden.

Q. How long have you lived in Golden?—A. Fifty years.

Q. Do you know the defendant, M. L. Holland?—
102 A. I do.

Q. During the fall of 1947 did you have any business transactions with him?—A Yes, sir. I sold him a house.

Q. What house did you sell to him?—A. Its location is on Thirteenth—Number 815.

Q. What was that number?—A. Right next to the hotel, across the street—across the alley.

Q. And did you give us the number?—A. Yes. 815 Thirteenth Street.

Q. What was the price for that sale?—A. Ten thousand dollars.

The Court: I didn't hear that.

A. Ten thousand dollars.

Q. Now how, and when, was that paid, Mr. Landry? First, when was it paid? Was it all paid at the time of the sale?—A. No.

Q. How much was paid?—A. Two payments. One in six thousand dollars, and the other four thousand dollars.

Q. When was the six thousand dollars paid?—A. That would be October 14th, 1946.

Q. Now the rest of it was paid later, you say?—A. Yes, it was.

Q. When was that paid?—A. Five months later.

103 Q. Was that represented by a deed of trust?—A. Four thousand dollars, yes.

Q. And how long was that deed of trust? For how long a period?—A. For just five months.

Q. And was it paid off on time?—A. Yes, sir.

Q. And that would make the payment of your four thousand when? In what year?—A. Well that's, let's see—that would be in '47.

Q. How was this four thousand dollars paid to you?—A. I made a mistake here. That was October 14th when the place was sold. And it was five months after October 13th for the second payment—four thousand.

Q. Do you recall—

The Court: Now let's wait a minute. He's trying to straighten out the dates for you.

A. That's right. About five months later.

The Court: Five months after October?—A. Yes, October.

The Court: What date in October was it?—A. I've got it down here.

The Court: Well, that would be sometime in February or March of 1947, is that it?—A. That's right.

104 The Court: All right.

Q. Now do you recall how the four thousand dollars was paid to you, Mr. Landry?—A. First was six thousand.

Q. How was that paid to you?—A. That was paid in ten's and twenties'.

Q. How was the four thousand paid to you?—A. Well, ten's and twenties' and two checks.

Q. Two checks?—A. Yes.

Q. Do you remember the amounts of the checks?—A. No, I don't remember the amount of the checks.

Mr. Chittim: You may enquire.

Cross Examination By Mr. Bruno.

Q. Mr. Landry, you remember talking to me before, don't you?—A. Yes, sir.

Q. You remember my asking you about this transaction?—A. Yes, sir.

Q. And you and I put our little old conversation down on a record, didn't we?—A. That's right.

Q. Mr. Landry, now you say the six thousand dollars was paid to you in cash?—A. In cash and a check. Well, I couldn't say a check. I don't know. I know I got six thousand dollars and four thousand. That would be ten thousand dollars. And there was two checks.

Q. At the time that we had this little conversation,
105 Mr. Landry, I showed you the checks, didn't I?—A. You did.

Q. And you didn't remember them at all.—A. Well, I didn't know. Well, I did know.

Q. Mr. Landry, before we get into these checks. This little piece of property that you sold to Mr. Holland was directly back of the hotel, wasn't it?—A. That's correct.

Q. And it was an old house, isn't that right?—A. Well, I should say about 45 years old.

Q. Yes. And Mr. Holland after he bought it asked you if you didn't want to move it away?—A. He did.

Q. Do you know why?—A. No.

Q. Mr. Landry, didn't you tell me when we talked the last time that Mr. Holland was going to expand his hotel, and that's why he asked you— —A. Yes, that's right.

Q. And did you tell me that you had talked with Mr. Holland and the architect about the new addition to the hotel?—A. I beg your pardon. I said it was hearsay.

Q. It was hearsay?—A. That's right.

Q. Now you and your wife owned this little property, didn't you, Mr. Landry?—A. No, we never lived
106 in it.

Q. I didn't ask you that, Mr. Landry. I asked if you and your wife owned it.—A. No.

Q. You owned it yourself?—A. I owned it myself.

Q. Mr. Landry, I show you what's been marked for identification as Defendant's Exhibit No. 2 and I ask you if you know what that is?—A. Yes. That's one check. When you talked to me about it I didn't know where my wife's name came from.

Q. I see. That check is made payable to you and your wife?—A. Well, she has no interest in it.

Q. Well, it is made out to you and your wife?—A. It is at that.

Q. And that check is for a thousand dollars?—A. $2,856.66, isn't it?

Q. Yes. I beg your pardon. Now, Mr. Landry, I show you another check marked Defendant's Exhibit 3 and ask you if you know what that is?—A. That's for one thousand dollars.

Q. Those were the checks you got when you first signed the contract, isn't it, Mr. Landry?—A. First signed contract?

Q. When you first signed the contract with Mr. Holland to buy this property—for them to buy this property—you got a thousand dollars in cash?—A. Well that's where that one thousand dollars goes with the six hundred
107 and the other—the six thousand with the four thousand.

Q. Now do I understand you then to say that you were paid five thousand dollars in cash and a thousand dollars by check the first time?—A. That would be correct on that.

Q. And the next time you were paid by check?—A. Four thousand in cash.

Q. Four thousand cash?—A. No, two thousand cash and two thousand eight hundred fifty-six, sixty-six.

Q. Two thousand, and two thousand eight hundred fifty-six, sixty-six would give you more than the purchase price, wouldn't it, Mr. Landry?—A. Well there was a four per cent on that four thousand for five months.

Q. Yes, but that wouldn't amount to eight hundred dollars, would it Mr. Landry?—A. It would at that.

Q. Mr. Landry, did I ask you—could I ask you this question please, sir? This transaction was closed in your lawyer's office, wasn't it?—A. It was.

Q. Mr. Patterson?—A. Yes, sir.

Q. Mr. James Patterson?—A. Yes, sir.

Q. And Mr. Patterson was your lawyer?—A. Well, not in the particular way. I knew Mr. Patterson real well,
108 and he had done something for me. But Mr. Holland says "Where will we go?" and I says "Well, we'll go to Mr. Patterson."

Q. Now you say that Mr. Holland paid you in tens and twenties?—A. Yes, and he was there too. Mr. Patterson himself.

Q. Didn't you tell me when we had our little conversation, Mr. Landry, that much of this money was in hundred dollar bills?—A. No, I only said that there was a few hundred dollar bills?

Q. Mr. Landry, did I ask you this question? May I please, your Honor? I am reading from questions and answers that I asked this gentleman.

The Court: Well, you ask the questions. I'll see.

Q. Mr. Landry, did I ask you this question last week? "Now if the total purchase price was ten thousand dollars, Mr. Landry, and you were paid six thousand dollars in cash on the day that you closed the deal, he owned you four thousand dollars more, is that correct?" And you answered "Yes?"

Mr. Chittim: If the court please, I object to this until it's identified as to the occasion.

Mr. Bruno: Well perhaps he is right, your Honor.

Q. Mr. Landry, do you remember when we had this little conversation, you and I?

109 The Court: Well, he's said he has.

Q. Do you remember where it was?—A. It was in the Holland House.

Q. It was in the Holland House? It was in Mr. Holland's apartment?—A. I couldn't say that.

Q. Well was it in one of the rooms at the hotel?—A. It was in one of the rooms.

Q. Now, did I ask you—

The Court: Who was there?

Q. Who was there?—A. Well, Mr. and Mrs. Holland.

Q. Who else?—A. I don't know who the other gentleman's name is—you had somebody with you.

Q. Was I there?—A. Yes.

Q. Mr. Hoagand, will you stand up please?

Whereupon a gentleman in the courtroom stood up.

A. Yes.

Q. And did I ask you questions, and did you give me answers?—A. Yes, I gave you answers.

Q. And after we had all the answers and all the questions, did I read back the record to you?—A. Yes, sir.

Q. And did you say at that time that that's exactly the way it was?

The Court: Well let's get down now to your questions and let's find out about each one. Find out what you
110 have in mind.

Q. Mr. Landry, do you have any records to show how Mr. and Mrs. Holland paid you in cash for this property?—A. No, I have no records of it.

Q. Did you make any record of it, Mr. Landry?—A. No, everything that I got went in my bank.

Q. Well now were there some hundred dollar bills among those, Mr. Landry?—A. No, sir there wasn't any.

Q. Mr. Landry, do you remember me asking you this question? "Do you remember the denominations of the bills?" and you answered, "Well, yes. There were quite a few hundred dollars, and then twenties." Did you make that answer?—A. Quite a few. That's right. And tens and twenties.

Q. Now Mr. Landry, I am going to show you what has been marked for identification as Defendant's Exhibit 4. Does your name appear on that, Mr. Landry?—A. Uh-huh.

Q. Do you know what that is?—A. Yes, it's 'Landry'.

Q. Do you know what the paper is, Mr. Landry?—A. No.

Q. You don't know what that is?—A. No.

Q. Does your wife's name appear on it?—A. Yes,
111 sir.

Q. Do you know her signature?—A. Yes, sir.

Q. Is that her signature?—A. No, sir.

Q. It is not her signature?—A. Not her signature.

The Court: I didn't hear that.

Q. He said that is not her signature. Is that what you said, Mr. Landry?—A. Yes. It doesn't look like her signature.

Q. Mr. Landry, will you examine Defendant's Exhibit 2. I ask you if your name is endorsed on the back of that check.—A. Yes, that's right.

Q. Does your wife's name appear on there?—A. Yes, sir.

Q. Is that her signature?—A. That isn't her writing. It's Mary F. Landry in the first place.

Q. I show you Defendant's Exhibit Number 3, Mr. Landry, and I ask you if your name appears on there?—A. Yes, sir.

Q. And that is your writing?—A. Yes, sir.

Q. Thank you, sir.

Mr. Bruno: I offer Defendant's Exhibit 2 and 3
112 in evidence, if you Honor please.

Mr. Chittim: No objection.

The Court: They will be received.

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CARL B. LARNED a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. Where do you live, Mr. Larned?—A. Golden.

Q. How long have you lived in Golden?—A. Approximately 33 or 34 years.

Q. Do you know the defendant, M. L. Holland?—A. I do.

Q. During the summer or early fall of 1947 did you have any property transactions with him?—A. Yes.

Q. Can you identify about the date when that occurred?—A. No, sir. I cannot identify the date.

Q. Can you identify the year?—A. I am quite sure it was '47, yes, sir.

Q. What was this transaction?—A. I sold Mr. Holland five lots. City lots.

Q. Where were they located?—A. They were lo-
113 cated in the twelve hundred block on Tenth Street.

Q. What were the terms of that sale? What was the purchase price?—A. Three thousand dollars.

The Court: I beg your pardon. How much?—A. Three thousand dollars.

Q. Was the entire purchase price paid at the time of the sale?—A. No, sir.

Q. As regards time, when was it paid? When was the three thousand dollars paid?—A. Well, sir, there was an interval between the down payment and the final payment.

Q. Do you recall what the initial payment was? The down payment?—A. Twenty-five dollars.

Q. Was the remainder paid at the time of the transfer? —A. That is correct.

Q. Do you recall how that was paid?—A. In cash.

Q. Do you recall what denominations?—A. I couldn't at this time recall the denominations except that they were possibly a few hundred dollar bills, and some twenties and some tens, and maybe even a few fives.

Mr. Chittim: You may enquire.

Cross Examination by Mr. Bruno.

Q. Mr. Larned, what is your business?—A. I'm
114 with the post office department.

Q. You're the assistant postmaster at Golden, aren't you?—A. That's right, sir.

Q. And you've been the assistant postmaster for a considerable period of time?—A. Several years, yes, sir.

Q. Now, Mr. Larned, the first payment of twenty-five dollars was made to you in 1946, isn't that right?—A. Sir?

Q. Would you like to see the contract, Mr. Larned?—A. Yes, sir.

Q. Would that refresh your recollection?—A. Yes, sir.

Q. Mr. Larned, I show you what has been marked as Defendant's Exhibit Number 5 and ask you if you know what that is?—A. Yes, sir. This is a contract to purchase the lots.

Q. That's a photostatic copy of it, isn't it, Mr. Larned? —A. Yes, sir.

Q. Does your name appear on it?—A. Yes, sir.

Q. What is the date of the contract?—A. The 7th day of December, 1946.

Q. And what was the consideration for that con-
115 tract?—A. Three thousand dollars.

Q. What did you get, Mr. Larned, as a down payment?—A. Twenty-five dollars.

Q. Now the twenty-five dollars was paid to you in 1946, right?—A. That is correct.

Q. The date that you executed the contract?—A. Yes, sir.

Q. And the balance was then paid to you in 1947?—A. That is correct.

Q. When you conveyed the property. Now, Mr. Larned, I show you what has been marked as Defendant's Exhibit 6 and ask you if you know what that is?—A. This is a photostatic copy of the deed.

Q. Conveying the property to Mr. Holland?—A. That is correct.

Q. Your name appears on there?—A. Yes, sir.

Q. And what's the date of that?—A. The 23rd day of August, 1947.

Q. Now, Mr. Larned, that piece of property is affectionately known as "The Horse Barns," isn't it?—A. That is correct.

Q. Where was the transaction closed, Mr. Larned?—A. In the Holland House, in Golden.

Q. Was Mr. James Patterson your attorney at 116 that time?—A. That is correct.

Q. And he drew up these papers?—A. Yes, sir.

Q. And the money was paid then in cash?—A. That's right.

Q. Now, as I understand your testimony, some of the money was in hundred dollar bills?—A. That is right, sir.

Q. Do you remember how it was handed to you, Mr. Larned?—A. As I recall, sir, it was counted out in bills of one hundred dollars each. One hundred dollar bills.

Q. Didn't it come out of an envelope, out of a safe?—A. I think Mr. Holland took it out of a safe in the lobby.

Q. He paid you precisely when he said he would pay you?—A. Oh yes, sir.

Mr. Bruno: At this time, if your Honor pleases, I offer Defendants' Exhibits 5 and 6 in evidence.

The Court: Any objection?

Mr. Chittim: No objections.

The Court: They will be received.

Re-Direct Examination by Mr. Chittim.

Q. Mr. Larned, did you state how many hundred dollar bills there were in that payment of cash?—A. No, sir. There were possibly a few.

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ERNEST E. WATERS, a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

• • • • • •

Q. Where do you live, Mr. Waters?—A. In
117 Golden.

Q. What is your business?—A. Purchasing agent for the Colorado School of Mines.

Q. Do you know the defendant, Mr. Holland?—A. I do.

Q. In 1947 did you have any property transactions with Mr. Holland?—A. I did.

Q. Can you identify about what date those occurred?—A. Well I sold Mr. Holland a piece of property in January.

Q. In January. Will you tell us the terms of that sale?—A. The property was approximately five feet by sixty feet. It was a piece of property on Lot 1 and Lot 2 of Block 32, South Clear Creek Addition.

Q. What was the consideration for the sale?—A. Five hundred dollars.

The Court: I didn't hear the amount.—A. Five hundred dollars.

118 Q. And when was that paid? At the time of the transfer?—A. At the time of the sale, yes, sir.

Q. And how was that paid to you?—A. By check.

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Cross Examination by Mr. Bruno.

Q. Mr. Waters, I show you Defendants' Exhibit 7 and ask you if you know what that is.—A. That's the check that Mr. Holland gave me for the purchase of the land.

Q. And that check is for how much money?—A. Four hundred ninety-nine dollars.

Q. And your endorsement appears on the reverse side of that?—A. Yes, sir.

Mr. Bruno: I offer Defendants' Exhibit 7 in evidence, if your Honor please.

Mr. Chittim: No objection.

The Court: It will be received.

Q. Now, Mr. Waters, this five foot strip of land was really a passageway to Mr. Holland's rear door, to his hotel, isn't that right?—A. That's correct.

Q. And there had been some dispute about persons using it, or having the right to use it, is that correct?—A. I don't remember any disputes, sir.

119 Q. Do you remember the woman that ran the coffee shop next door to Mr. Holland?—A. Yes, I don't remember her name though.

Q. But you don't remember any dispute with respect to it?—A. No, sir, I can't.

Q. Now that property was sold pursuant to an agreement, isn't that right, Mr. Waters?—A. Which property is that?

Q. The five foot piece of property we are talking about. —A. Pursuant to agreement?

Q. Yes, sir.—A. Made at what time?

The Court: Well does it make any difference?

Q. In January of 1947.—A. You mean between Mr. Holland and me?

Q. Yes.—A. Yes, sir.

Q. And then you later transferred it to Mr. Holland by deed?—A. That's right.

Q. Now Mr. Waters, do you remember the property directly behind the hotel, generally known as the Landry property?—A. I do.

Mr. Chittim: If your Honor please, that's immaterial because it wasn't brought into direct examination.

The Court: We'll just have to bring him back, your

Honor. I thought maybe a question or two would clear it up.

The Court: All right. Go ahead.

Q. There was an old house on there, was there not?—A. Yes, sir.

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Q. Do you know whether Mr. Holland asked you if you wanted that property?—A. He did.

Q. Do you know why he asked you if you wanted the property?

The Court: That would be a conclusion of the witness.

Q. Did he ask you to move it off?—A. Yes.

Q. And do you know why he asked you to move it off?—A. So he could get the property cleared.

Q. Do you know what was going to happen on that property?

The Court: That's objectionable. Calls for hearsay or a conclusion of the witness.

Q. Did you move the property, Mr. Waters?—A. No, sir.

• • • • •

CHARLES EDWARD DAVISON, a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

• • • • •

Q. Where do you live, Mr. Davison?—A. 1000 Eighteenth Street, Golden.

Q. What is your business, or work?—A. Secre-

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tary and treasurer of the Duvall-Davison Lumber Company, in Golden.

Q. Do you know the defendant, Mr. Holland?—A. Yes, sir.

Q. In the latter part, perhaps of December, of 1948, did you have any business transactions with Mr. Holland?—A. You mean our company?

Q. Your company, yes, sir.—A. Yes, sir.

Q. Will you tell us what those were?—A. It was lum-

ber and building material that Mr. Holland purchased at that time.

Q. Did you bring with you the books of your company?—A. I brought our ledger sheet and the individual sales tickets.

Q. Will you turn to the ledger sheet and tell us when that transaction took place?—A. This ledger sheet is from October 4th, 1948, to October 11th, 1949.

Q. Do you have your invoices for the month of December, 1948?—A. In December, 1948, there were just two invoices, for the month of December.

Q. Well did you make any extensive sales by your company to Mr. Holland in 1948?—A. Well, in the latter part of 1948. The individual invoices I was asked to
122 bring in totaled around seventeen hundred or eighteen hundred dollars.

Q. And they were made during what period?—A. From October 4th, 1948, through December 9th, 1948.

Q. And what purchases did those cover?—A. Type of material?

Q. Type of material.—A. Building materials.

Q. Do you know of your own knowledge what they were purchased for?—A. I presumed at the time they—

The Court: Well, if you know.

Mr. Bruno: We haven't any objections, your Honor.

The Court: Well we might just as well abide by the rule. If you know of your own personal knowledge, all right. If it's by guessing or something he told you, you may not testify.

A. Well Mr. Holland was constructing a barn at the time, and that's where the bulk of the material was delivered.

Q. Do your records show when that bill was paid, and what year that was paid?—A. Well, they show November 9th. There was one payment—$1,136.13.

Q. That's November of?—A. '48. November.

Q. Were there any others paid in '48? Any other
123 portions of that bill paid in the year 1948?—A. December 9th. $636.17.

Q. On December 9th of 1948?—A. Yes, sir.

Q. Now are you related to Elizabeth Davison?—A. Yes.

Q. What relationship?—A. I am her son.

Q. Do you know of your own knowledge whether she had any property transactions with the defendant, M. L. Holland?—A. Yes, sir.

Q. What was that transaction?—A. That was the sale of 160 acres of ground two or three miles north of Golden.

Q. And what was the purchase price of that land?—A. Six thousand dollars.

Q. Do you know when that was paid? In what year was it paid, or the terms of the sale?—A. No, I don't recall the year.

Q. Do you know when the sale took place?—A. No, sir. It was approximately '47 or '48. But I have no record of the date.

Q. You know the total price, however? You're sure of that?—A. Six thousand dollars.

Q. Do you know whether it was all paid at one time, or not?—A. No, it was paid in two different times.

• • • • •

Cross Examination by Mr. Bruno.

Q. Mr. Davison, you're with Duvall-Davison Lumber Company?—A. Yes, sir.

124 Q. And their business is at Golden?—A. Yes, sir.

Q. Now, again, Mr. Davison, your records show on November 9th, 1948, a payment for lumber that Mr. Holland purchased?—A. Yes, sir.

Q. Will you give us that figure?—A. That's one one three six thirteen.

The Court: That's eleven hundred and thirty-six dollars and thirteen cents?—A. No, eleven hundred—one thousand one hundred thirty-six dollars, thirteen cents.

The Court: Well testify in that way. Don't just recite off figures. We'll get confused about it.

Q. Now, Mr. Davison, I show you what has been marked Defendant's Exhibit Number 9. Do you know what that is? —A. Yes, sir.

Q. What is it?—A. That's a photostatic copy of a check dated November 9th, 1948.

Q. Now the figure on that check is different than the

figure you gave us as of that date, isn't it, Mr. Davison?—A. Yes, sir.

Q. That check is a little more than you said.—A. Well the check is a little less than I said.

Q. How much did you say?—A. One thousand
125 one hundred thirty-six dollars and thirteen cents.

Q. And the check is for?—A. One thousand one hundred eighteen dollars, seventy-nine cents.

Q. Now I show you Defendant's Exhibit 8. Do you know what that is?—A. Yes. That's a photostatic copy of a check to Duvall-Davison Lumber Company dated December 9th, 1948, for six hundred twenty-three dollars, forty-five cents.

Q. And when you add those two amounts up, that's exactly what Mr. Holland owed you, wasn't it?—A. Less his cash discount. The small discrepancy was credit on our ledger sheet and was a two percent discount for prompt payment.

Q. And you were paid in full?—A. Paid in full.

Mr. Bruno: I offer Defendants' Exhibits 8 and 9.

Mr. Chittim: No objection, your Honor.

The Court: They will be received.

Q. Mr. Davison, with respect to this 160 acre ranch that you testified to, you don't know the date when it was purchased, or the amounts, or when it was paid for?—A. I know it was purchased for six thousand dollars. I haven't my mother's records to give the dates.

Q. You don't know whether part of it was paid in
126 one year and part in another?—A. I know it was paid in two separate payments.

Q. You don't know in which year?—A. No, sir.

Q. You have no personal knowledge of that?—A. No. That is correct.

* * * * * *

Robert B. Newton a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

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Q. Where do you live, Mr. Newton?—A. 1461 Benton, Denver.

Q. What is your occupation, or work?—A. Clerk and recorder for Jefferson County.

Q. And as such, in such capacity, do you have in your custody the records that are recorded in that county?—A. Yes, sir.

Q. Did you at my request bring certain books with you? —A. Yes, sir.

Q. Do you have them there?—A. Yes, sir.

Q. Will you turn to the official records, the rec-
127 ords found at Page 268 of Book 589?—A. I have it.

Q. What appears at that page?—A. When it was recorded?

Q. No. What instrument? What kind of an instrument? —A. It's a photostatic copy of a warranty deed.

Q. From whom, to whom?—A. Conveys property from Elizabeth M. Davison to M. L. Holland.

Q. Did you at my request bring the photostatic copy of that record?—A. Yes, sir.

Q. Do you have it there? I show you what has been marked for identification purposes as Government's Exhibit I and ask you if that is a photostatic copy— —A. That is a photostatic copy of the deed.

Q. Now I ask you to turn in the same book, 589, to page 392, and tell me what instrument appears of record there.— A. That's a photostatic copy of a deed of trust.

Q. From whom, to whom?—A. From M. L. Holland to Elizabth M. S. Davison.

Q. Can you tell me whether the property described there is the same as the property described in the other instrument at page 268?—A. I didn't proofread it. I can look at it. It's the same.

Q. I hand you what has been marked for identification purposes as Government's Exhibit J and ask you if that
is a photostatic copy of the record that you have
128 just referred to.—A. This is a photostatic copy.

Q. I now ask you to turn to Book 608, and at page 548 thereof, tell me what instrument appears of record.—A. It's a photostatic copy of a release of trustee.

Q. And does it cite what trust deed it relates to?—A. Yes.

Q. How it is identified?—A. It's property filed under date of the 20th of January, 1848, in Book 589, page 392.

Q. And that's the same deed of trust you just referred to?—A. Yes, sir.

Q. I now hand you the exhibit marked for purposes of identification as Government's Exhibit K and ask you if that is a photostatic copy of— —A. This is a photostatic copy of this deed.

Mr. Chittim: I now move for the introduction into evidence of these three instruments.

The Court: Any objections?

Mr. Bruno: No, we have no objections, your Honor.

The Court: They will be received.

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Cross Examination by Mr. Bruno

Q. Mr. Newton, may I impose on you again to turn to Book 589 at page 268. Now Mr. Newton, may I ask
129 you what that warranty deed recites as the consideration?—A. Ten dollars and other good and valuable considerations.

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Georgia Rose a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—A. Georgia Rose.

Q. And where do you live?—A. Route 1, Box 228, Golden.

Q. Where are you employed?—A. At the Golden Savings & Loan Association, in Golden.

Q. In what capacity?—A. I am assistant secretary-treasurer, and also the bookkeeper.

Q. Did you at my request bring with you the records of your company?—A. I did.

Q. Showing its transactions with the defendant, Mr. Holland, during the years 1947 and '48?—A. I did.

Q. Will you turn to those records and tell us what transactions took place during those two years?

Mr. Bruno: Now, if your honor pleases, I think we ought to establish that this woman keeps the rec-
130 ords and takes care of them. I haven't heard any such testimony.

The Court: Well she is going to find out something about the records. Nothing has come in yet.

Q. Well do you keep the records? Do you either keep the records, or are the records kept under your supervision?—A. I keep the records.

Q. Yourself?—A. Yes.

Q. How long have you done that?—A. Eight years.

Q. Do you also collect payments that are brought to the company?—A. That's right.

Q. Now, turning to your records, will you tell us what they show with reference to transactions between your company and Mr. Holland for the years 1947 and 1948?—A. It's the original first mortage loan ledger sheet form, M. L. and Ethel E. Holland, La Ray Hotel, Golden. And it's a first trust deed covering the property at fifteen hundred Ford Street for four thousand dollars, to be paid off in 36 months at a hundred dollars a month, from date of May 8th, 1947.

Q. Bearing what rate of interest?—A. Six percent.

Q. How much was due by the Hollands on that loan, to your company at the end of 1947? The year-end.—A. Three thousand, four hundred thirty-one dollars, fif-
131 ty cents.

Q. Now at the end of 1948?—A. Two thousand four hundred nine dollars four cents.

Q. Did you personally receive any of these payments?—A. I did.

Q. Do you recall how those payments were made? Whether by check, or by cash?—A. Well I couldn't say right now because it's been six years ago. I'm not sure.

Q. I ask you if this is your statement here, your name and signature appearing here?—A. That's right.

Q. Do you recall making a statement on the 28th day

of October, 1949, to one of the Internal Revenue Agents?—A. Well I remember talking to him. I didn't remember making a signature. But that's my signature there.

Q. Does this refresh your memory, if I read to you a statement which —

Mr. Bruno: Just a moment, if your Honor pleases. We don't refresh recollections that way.

The Court: Well in whose handwriting it is?

Q. Is this in your handwriting?—A. The signature is.

Q. The other is not?—A. No.

Q. Do you recall making a statement to Mr. Bodley, one of the agents of the Internal Revenue Department, that these payments were made to you by Mr. Holland
132 generally in currency and generally in denominations of twenty dollar bills, or less?—A. Well, if that's what I signed—I don't remember. We have four hundred accounts.

Q. But if you said that at that time —

Mr. Bruno: Just a moment. She said she didn't remember.

The Court: Was that statement written in your presence?—A. Yes.

The Court: You signed it?—A. That's right.

The Court: Hand it to her and see if it refreshes her recollection.

Q. Will you read that and see if it refreshes your recollection?—A. That's right.

Q. Now having refreshed your recollection, —

The Court: Well does it refresh her recollection?—A. It does.

Q. Now having refreshed your recollection, how do you answer the question?—A. What was the question?

Q. The question of how did Mr. Holland make the payments to your company.—A. Usually by five 20-dollar bills.

The Court: I didn't hear that.

A. Usually by five 20-dollar bills.

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Cross Examination by Mr. Bruno

Q. Mrs. Rose, are you the only one that receives
133 payments from the customers of the bank?—A. Not always, no.

Q. Were you the person that always received it from Mr. and Mrs. Holland?—A. Not always, no.

Q. How many times would you say you received it from Mr. Holland?—A. I wouldn't have the slightest idea.

Q. Did your boss, Mr. Dennis —A. Mr. Dennis is not my boss.

Q. Just let me ask the question Mrs. Rose, please. Did your boss, Mr. Dennis, ever hand to you hundred dollar bills in payment?—A. Not that I know of.

Q. You wouldn't say that he didn't?—A. Well Mr. Dennis is not my boss.

Q. You know Mr. Orville Dennis?—A. Yes, I do.

Q. What connection does he have with this establishment of yours?—A. He is the president of the association.

Q. And now I ask you again, do you ever remem-
134 ber Mr. Dennis bringing to you four or five times during this period, hundred dollar bills from the hotel in payment of these installments?—A. No, I do not.

Q. Will you say that he did not?—A. I do not remember that he did.

Q. Was there a Mr. Hamlin who also took payments at the window?—A. That's right.

Q. Now did Mr. Holland bring those payments to you, or did Mrs. Holland?—A. Both of them.

Q. How many times will you say that they brought you these five 20-dollar bills?—A. I wouldn't know. They made one payment a month.

Q. You have four hundred customers at the Bank? —At the Building and Loan Association?—A. Approximately.

Q. Well, how is it that you remember this specific one? —A. Well, it was a new account at that time.

Q. And that was in what year?—A. '49 when I made that statement.

Q. Did Mr. Lester Baine have an account at the bank?—A. That's right.

Q. Do you know how he paid his account?—A. By check.

Q. And how much a month?—A. I don't remem-
135 ber that.

Q. Did Mr. Harry Hoffman have an account at your bank in November of 1948?—A. He has.

Q. How much did he pay a month?—A. I don't know.

Q. Do you know how he paid it?—A. By check.

Q. Did Mrs. Edna Nagars have an account at your bank that year?—A. Yes.

Q. How did she pay it?—A. By cash.

Q. And how much?—A. I don't know.

Q. Mr. Delmar Dorpmer. Did he have an account at your bank at that time?—A. Yes, he did.

Q. Did you answer "yes", Mam?—A. Yes, sir.

Q. How did he pay?—A. Well he paid first by cash, and now they pay by check.

Q. How did he pay then?—A. By cash.

Q. And how much?—A. I don't know.

Q. Mrs. Rose, I ask you again. Do you know ap-
136 proximately—your best impression—of how many times you were paid in five 20-dollar bills?

The Court: Now you have asked that question in substance, counsel. I shall not allow you to repeat it.

Mr. Bruno: Thank you, your Honor.

The Court: Was it always five 20-dollar bills?

A. I wouldn't say always, no.

Q. Well, how many times?

The Court: Now that's repetitious, counsel. Same question all over again.

Q. Were you ever paid in hundred dollar bills?

The Court: That's the same question all over.

Mr. Bruno: Well, your honor, I think I have the right to test her credibility.

The Court: You've asked her about the hundred dollar bills. The question has been asked and answered. I have given you great latitude in testing the credibility of this witness. You have asked on other accounts. She has testified with pretty fair accuracy, it seems.

Q. Do you know when the account was paid in full?—

I can tell you. It was paid in full on February 26th, 1951.

Q. February 26th. 1951?—A. That's right.

Q. On that day how much did they pay?—A.
137 $74.11.

Q. Now, Mrs. Rose, you gave this statement to the Government in 1949?—A. That's right.

Q. May I see a copy of it please? Mrs. Rose, was there one time when Mr. Holland paid two hundred dollars one month?—A. Yes, July 30th, '48.

Q. What was the denominations of the bills at that time? —A. I wouldn't know.

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THEODORE C. HITCHINGS, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination By Mr. Chittim.

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138 Q. Where do you live Mr. Hitchings?—A. 1135 Jasmine Street, Denver.

Q. And what is your business, or work?—A. We're in the real estate business.

Q. And by "we" are in the real estate business, whom do you mean?—A. We do business under the name of T. C. Hitchings & Son.

Q. And you are one of the members of that firm?—A. Yes, sir.

Q. Do you have custody and control of the books of your firm?—A. Yes, sir, I do.

Q. Will you turn to your firm books and tell me whether or not your firm made any loans to Mr. M. L. Holland during the year 1948?—A. Yes, sir. We have such a loan, which we made in 1948.

Q. Will you tell me when that loan was made?—A. The copy of the note which I have in my possession is
139 dated February 18th, 1948.

Q. And it is for what amount?—A. Twenty-five thousand dollars.

Q. When is it due, according to the terms?—A. It's due on February 18th, or was due on February 18th, 1951.

Q. Now can you tell me from your records what amount was due on that loan at the end of the year 1948—on December 31st, 1948?—A. According to our records here, the principal balance of twenty-five thousand dollars remained due at the end of the year 1948.

Q. And what interest did that loan carry?—A. Five percent, per annum.

Q. Now does your firm handle the sale of life insurance?—A. Yes, sir.

Q. Did you, during the year 1948, sell any life insurance to either of the defendants, Marion L. Holland and Ethel E. Holland?—A. Yes, sir. We did.

Q. Will you tell us what you sold to them, and to whom? —A. There were two policies of ordinary life insurance, each in the amount of twenty-five thousand dollars. These policies were placed with the Security Life and Accident Company of Denver, and the policies were dated October 21, 1948. And according to the records of the Security Life and Accident Company, the premiums were paid on November 10th, 1948.

Q. Now what was the amount of the premium on
140 each?—A. On Mr. Holland's policy, the premium was $1,476.25.

Q. And what was the amount of the premium on Mrs. Holland's?—A. $1,183.25.

Q. Now did you indicate whether those amounts were paid in '48—A. Yes, sir. According to the records of the Security Life, which I checked this morning, both premiums were paid on November 10th, 1948.

Mr. Bruno: Now if your Honor pleases, I move that that be stricken. He is testifying from hearsay—the records of some other company, not his, and the jury told to disregard it.

Mr. Chittim: May I ask him an additional question to make sure?

The Court: Yes.

Q. Are the premiums paid to you?—A. No, sir. I do not think that these premiums were paid to our office. I examined our books and I find no record of them having passed through our books.

Q. Does the company furnish you a record of the pay-

ments on the policies which they hold?—A. Yes, sir, they do, in the form of notices and in the form of the check on the commission.

Q. Do the records which you have and maintain for your company show anything with regard to payment of these premiums?—A. Nothing other than the commission on the writing of the life insurance which was paid to our office.

141 The Court: Well it's obvious that he doesn't know anything about it except what he learned from somebody else.

Q. When was this twenty-five thousand dollar loan paid off, if it has been paid off?—A. I have a release of a deed of trust by the public trustee, dated February 21, 1951.

Q. Does that signify the paying of that loan?—A. It releases the trust deed which was filed on the record to secure the note.

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GEORGE C. BODLEY a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

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Q. Where do you live, Mr. Bodley?—A. Denver, Colorado.

Q. And what is your work, or occupation?—A. I
142 am a special agent with the Internal Revenue Service.

Q. How long have you been with the Internal Revenue Service?—A. Since 1945.

Q. Do you know the defendants, M. L. Holland and Ethel E. Holland?—A. I do.

Q. Under what circumstances?—A. I met them in connection with an investigation being made of their income tax returns.

Q. Did you have occasion to question formally Mr. M. L. Holland?—A. I did.

Q. When did this occur?—A. On October 25th, 1949.

Q. And where did this occur?—A. It was in Room 1 of the Holland House hotel, Golden, Colorado.

143 Q. Who was present?—A. Marion L. Holland, Ethel E. Holland his wife; Dwight Dulaigh, tax consultant; Albert R. Garvin, Internal Revenue Agent; Mrs. Jean J. McNevin, reporter; and myself.

Q. Now preliminary to questioning Mr. Holland, did you make any statement to him?—A. I explained to Mr. Holland that he could have his attorney present at that interview. He stated that he did not wish to do so. I further explained to Mr. Holland that he had a right, under the Constitution, to decline to make any statement; that he did not need to answer any question which might incriminate him under the laws of the United States. I explained to Mr. Holland that anything he might say could be used against him in any action by the United States Government. He said he understood that. I asked him if he had come there of his own free will. He said he had. I asked him if he would be willing to answer questions under oath. He said he would. And I administered the oath to him.

Q. Now will you just state what you said and what Mr. Holland said at that conference?—A. Well, I asked Mr. Holland his name, and the date of his birth. Then I asked him when he purchased the La Ray hotel. He said
144 that he purchased it on April 1st, 1946, from Leonard DeLue, for seventy-five thousand dollars. He said that he had paid thirty thousand dollars down.

Mr. Bruno: Now just a moment please, if your Honor pleases. If they are going to use this statement, then I think we ought to have the statement rather than the witness's interpretation of the statement. If he wants to read the questions and answers, that's fine.

The Court: Do you have the statement?

Mr. Chittim: There is a formal recorded statement, your Honor.

The Court: Well if you wish to do it, have the men testify to what occurred in the conference. Or have the question and answer statement introduced in evidence. I expect the government can proceed either way it wants to. You can get hold of the statement if you want to and check it. You can introduce it.

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Q. Will you state what Mr. Holland told you at this conference?—A. Yes. Continuing, Mr. Holland said that he paid thirty thousand dollars down on the hotel, and signed a note for the balance of the seventy-five thousand dollars. He stated that he had issued a check in reference to the thirty thousand dollars payment, on money he had in his bank. I then asked Mr. Holland what his net
145 worth was on January 1, 1946, just three months prior to the time he purchased the hotel. He said he thought it would be a hundred and fifty-six or a hundred and fifty-seven thousand dollars; that it consisted of cash. I asked him if he owned some stocks, and then he qualified the cash statement saying that he did own some stocks and he sold the stocks at the time that he bought the hotel. In addition to the stocks, he said his only other assets were cash. I asked him what the amount of that currency was. He said it was a hundred and four thousand dollars, plus nine thousand dollars, or a hundred and thirteen thousand dollars. Then he repeated that he had no other assets than the stocks and the currency.

He stated that the currency of a hundred and thirteen thousand dollars was acquired throughout his lifetime; that he had a hundred and four thousand dollars in cash on the 22nd day of December in 1933 when he quit business at 1615 Welton Street. He said that the additional nine thousand dollars was accumulated after 1933. He stated that the one hundred and four thousand dollars which he had on December 22nd, 1933, remained intact until he went into the hotel business; that he had never spent or invested any part of it during the interlude. The additional nine thousand represented savings for the period '33 to '45; that he had savings during that period also in addition represented by his investments in the securities, which he estimated would be about fifty thousand dollars. After
146 that series of questioning, I summarized the thing, and these are my words: "In other words, to summarize this whole thing, you had a net worth of a hundred and fifty seven thousand on January 1, '46, which consisted of a hundred and four thousand dollars which you had since December 22nd, 1933, and the balance of nine thousand dollars in currency, and your investments in securi-

ties?" He answered: "Yes." I then asked him what liabilities he had on January 1, 1946. He said he had a note at the U. S. National Bank secured by stock. He didn't recall any others. I asked him if he had any liabilities dating from the time he'd been in business in 1933. He said in the summer of '46 he paid twenty-five hundred dollars to the Windsor Dairy, or H. Brown Kennedy, on an old account; that he had other liabilities. He didn't know the amount of them.

I asked him if he had been sued on these old accounts, and he said his corporation had been sued; that he thought he had been sued jointly also; that as far as he could remember there was just one actual judgment secured against him personally; that that judgment had not been satisfied. He didn't wish to tell me who that creditor was. I asked him who his landlord was at that time and he said "I don't want to discuss that either." I asked him if the only payment that had been made to date was the twenty-five hundred dollars to the Windsor Dairy, and he said that it was. I then asked him if he'd give us a statement of his net worth at the end of December 31st, 1948. He said that that was a matter of book record, and in response to questioning he stated he had a bank account at Golden, and the U. S. Bank; that he owned the hotel and
147 equipment, and the coffee shop next door; that there were improvements on those properties recorded in the books. He owned a residence at 815 Thirteenth Street, and a residence at 1500 Ford Street, the skating rink in Golden, and 160 acres of land which cost six thousand dollars; that he had five horses that cost a thousand dollars; that he owned a horse barn and building, and the land on which it was located. I asked him how much cash they normally carried in the cash registers. He said they set the registers each morning with four hundred and fifty dollars, and then they had some additional cash in the safe. This is with reference to the end of December 31st, 1948. And I asked him if he had any other currency at that time. He said he had about thirty thousand dollars. I asked him what the source of this thirty thousand dollars was that he had at the end of 1948. He said that was just part of his accumulation, a part of the hundred and thirteen thousand dollars which we had discussed previously. I then asked

him what liabilities he had on December 31st, 1948. He said he owed twenty-five thousand dollars to Hitchings and also a mortgage on 1500 Ford Street; that the current bills of the business were not past due. In response to questions about his life insurance, he stated—I asked him: "What life insurance policies do each of you have"?—he stated "I have twenty-five thousand, she has twelve thousand," which he corrected and said should be thirty-five thousand and twenty-five thousand. And it was in the New York Life and Security Life. He had the New York Life from about '35 or '36, and the other policies he had had about a year.

148 In response to questions, he indicated that he and his wife lived at the hotel continuously since they bought it; that they ate their meals there, and that they occupied two rooms in the hotel. I then gave him his income tax return for 1946. He identified his signature on it, and stated Mr. Dulaigh prepared the form from the information which Mr. Dulaigh had in the books. I asked him if he was satisfied with the preparation of that return when he signed it. He said, yes. I then handed him his 1947 income tax return, discussed the same matters with him. He said Mr. Dulaigh prepared that from the books, and that he, Mr. Holland, was satisfied with the preparation of it. I gave him his 1948 income tax return. He identified his signature, and stated it was prepared by the same man from the same source. I then referred to his currency of a hundred and four thousand dollars—asked him with reference to the currency in the amount of a hundred and four thousand dollars which he had on hand December 22, 1933—during what period it had been accumulated. He answered that was during the period of "all my life—most of it through the 20's" I asked him, "Can you tell us what denominations the currency was in"? Answer: "Most of it was in hundred dollar bills." Question: "When did you convert it to hundred dollar bills"? Answer: "From time to time." Question: "Do I understand you to say that by December 22nd, 1933, it had all been converted to one hundred dollar bills"? Answer: "I don't think it had all been converted. The big money had been
149 converted, but I think there was other that was partially. What I mean to say is that it was my policy

to wrap a whole thousand dollar pack, and all the money that was not hundred dollar bills—there was some as low as twenties in it. Not very much, however." Question: "The major portion was in hundred dollar bills"? Answer: "Yes, it was."

He stated that after he quit the restaurant business he kept the currency at home; that he didn't take it to Seattle with him, that he left at home during the time he was in Seattle; that while he was in Casper, Wyoming, he kept it in various places. He had taken the currency to Billings, Montana, with him; that his wife knew about the currency; that no one else did; that he started using the currency after he decided he would settle down permanently in Golden, at some date after he bought the hotel; that he used it to purchase property that was essential to the operation of his business; that he deposited some of it in the bank as he needed it to write checks, but that only a small amount went in the Golden bank. He had used some of it for making payment directly on properties without running it through his bank account. I asked him: "Did you ever keep any record of the withdrawals of this currency as you took it out"? He said "No." He kept track of it in his head. I asked him why he didn't use the money to pay off his loan on the hotel. He said: "Simply because I told Mr. DeLue I didn't have the money, and I didn't want to pay it off until the first of the year." I asked him why he did not pay for his other properties in full
150 at the time of the purchase. He said: "Just don't like the idea of patting money out. It wasn't necessary. I wanted to keep it as long as I can." I asked him again about the Dairy bill. "Did you recently make a payment to the Windsor Dairy on an old bill, owing since 1933"? He answered: "That was in the summer of 1946." Question: "What was the amount of that payment"? Answer: "Twenty-five hundred dollars, if I remember correctly. I may be mistaken as to that. That is a matter of book record." I asked him if it was a full payment, or agreed settlement. He said it was an agreed settlement. I asked him why had that not been paid previously. He answered: "I don't want to answer that." I then asked him what records he maintained concerning his businesses. He stated

that it was the books kept by Mr. Dulaigh—Dwight Dulaigh; that the books were kept in Mr. Dulaigh's office. I asked him what information they gave Mr. Dulaigh concerning the receipts of the business. He said they furnished Mr. Dulaigh a daily cash report showing the receipts and the cash paid out. Mrs. Holland prepared this information most of the time. I asked him if in the past he had given Dulaigh any information about the currency he had on hand. Mr. Holland said no. I asked him if all the receipts were deposited in the bank account, and he said no; that the exceptions were cash paid out items; that also they kept no record of cash withdrawn for personal expenses. He said Mrs. Holland checked the cash registers; that the cash register tapes were not available; they were thrown out in the waste basket after they checked them. He said

both he and his wife devoted all their time to the
151 business. I then asked him about his early history.

He stated that he started the restaurant business in 1921 at 1444 Champa Street, moved to 1732 Welton in 1923. He was there for ten years. Moved to 1615 Welton, was there four or five months. His restaurant business was incorporated in 1926. He thought the name at that time was The Holland Cafe Company, and then he formed a new corporation of The Pine Grove Cafe Company; that there was a later corporation which he thought was The Rocky Mountain Restaurant Company. I asked him how much stock did he owe in each of these corporations. Answer: "I guess all, except the qualifying stocks and records." I asked him: "Did you control the corporations as completely as you did the individual business before it was incorporated"? He said: "Yes." I asked him: "When did you discontinue the restaurant business"? He said: "December 22nd, 1933." "Was business bad at that time"? "Yes." He indicated that it wasn't profitable. He said he hadn't been losing money because he hadn't been putting money in to lose, but he'd been going behind in his accounts; that the business owed money at that time; that he'd been sued by his creditors prior to the time he went out of business. I asked him the question: "Do I understand that when the obligations got too great, or the suits too many, you formed a new corporation to get a fresh start?" He answered: "Yes." I asked him if he took bankruptcy. He said, no, and

also that he had never been declared bankrupt. I asked him: "When you quit the business in 1933, in December 1933, did you sell out to someone"? He answered:
152 "No, I just picked up my money, what I could, and walked out, and called H. Brown Cannon, the man whom I paid the settlement on this note in the summer of 1946 because he was the only one at that time who had mortgages recorded at that time against the fixtures of my business, and I called him and told him I was giving him the setup for what I owed him." He further said: "I simply took off in disgust." I asked him what he did after that. He said: "Well, I think I sold Hoover vacuum cleaners." I asked him how long he sold the vacuum cleaners, and the answer he gave was "probably six months"; that he went to Casper in December of 1934; that he worked at the Townsend Hotel for 7 years on a salary of approximately one hundred seventy-five dollars a month. His wife and son remained in Denver during that period because it was to their economical advantage to remain under those conditions. He returned to Denver in 1941 at Christmas time. Then he worked at the Golden Lantern restaurant five or six months as a chef. After that he went to Orange, Texas, worked in the shipyards as a chief chef. He stayed there a very short time. Then he went to Billings, Montana. He stated that was in the fall of '42. He worked for Q. Edwards in a restaurant as a manager, or chef, or steward; that he worked in Billings until April, 1945. Mr. Edwards sold the restaurant. And after that he returned to Denver; that he lived several different places after he returned to Denver, and then went to work at the La Ray hotel in Golden the 1st of May, 1945; that he worked at the La Ray hotel in Golden until November
153 15th of that year, and then he went down to see his parents in Arkansas. He returned to the La Ray hotel early in '46 and worked there until he purchased it on April 1st, 1946.

Mr. Garvin, the Internal Revenue Agent, asked Mr. Holland, "Did you borrow from any banks between 1933 and 1945"? He said yes, he did. He borrowed small amounts to pay for stocks. That it would be the U. S. National Bank or the Wyoming National Bank at Casper. I then asked

this question: "I believe you testified here earlier that you had about a hundred and four thousand dollars in currency in 1933, and that you had about thirty-five thousand dollars in outstanding obligations. Can you give us the reason why you didn't pay off all those creditors at that time"? He answered: "I stated that before, Mr. Bodley, and I don't care to restate that. That is an embarrassing question which I don't believe has any bearing on this."

Q. Now did you have occasion to question Mrs. Ethel E. Holland formally?—A. I did.

Q. And when was that?—A. That was on the same day.

Q. Where?—A. October 25th, 1949, Room 1 of the Holland House hotel, Golden, Colorado.

Q. And who was present?—A. Mrs. Ethel E. Holland, Marion L. Holland, her husband; Dwight Dulaigh, tax consultant; Albert R. Garwin, Internal Revenue; Jean
154 J. McNevin, reporter, and me.

Q. Now preliminary to questioning Mrs. Holland, did you make any statement to her?—A. I explained to Mrs. Holland also that she could have her attorney present and she stated she did not wish to do so. I told Mrs. Holland that she had a right under the Constitution to decline to answer any question or to make any statement which might incriminate her under the laws of the United States. I explained to her that anything she might say could be used against her at any future time in an action by the U. S. Government. She said she understood that. She had come there today of her own free will; that she was willing to answer questions under oath. And I administered the oath to her.

Q. What did Mrs. Holland tell you?—A. In response to questioning, Mrs. Holland stated she assisted her husband in the management of the hotel; that she made the daily record for the bookkeepers—for the bookkeeper, pardon me—it's singular. I asked her what information did she furnish Mr. Dulaigh. She said: "All receipts. All of the cash paid out. And then of course I turn the checkbook over to him on those paid by check." She stated that either she or the cashier paid the bills that were paid by cash; that she wrote the checks and Mr. Holland signed them; that she signed the cash registers and she balanced them every day; that she prepared the envelope showing

the daily sales and paid-outs. I asked her what was done with the cash register tape. She said: "After I pre-
155 pare my report for Mr. Dulaigh I throw them away. I balance each register separately, and then I combine them." She stated the receipts were deposited in the First National Bank at Golden; that they all went there; that there was no record kept of currency withdrawn by her or Mr. Holland. When they needed some, they just took it out and used it. She stated that they made a practice of cashing checks, but she didn't cash checks to the extent that it was necessary to go to the bank to draw money out for that purpose. I asked her if at any time since they were married if she had income of her own. She stated that she worked while Mr. Holland was away, and while he was in Casper she worked for the Fox theatres; that she had temporarily worked for them occasionally back in 1929, and after Mr. Holland went away she worked steadily; that was 1933. She stated she worked for them from 1933 until she went to Billings with Mr. Holland about 1942 or 1943. I asked her what her salary was for that period. She estimated it to be a couple of thousand dollars a year; that while Mr. Holland was away during the years '33 to '41, she and her son were living in Denver. I asked her who took care of him while she worked, and she said he was big enough that he didn't need much care. She was with him every morning and every evening, and "we had Bill taken care of if I wasn't home with him." She made arrangements for his lunch, and she was there for breakfast and dinner. I asked her why she continued working in Denver instead of joining her husband in Casper. She stated "because Bill was in school." She stated she assisted her husband in the restau-
rant business prior to 1933; that they went out of
156 business because they didn't like things at that time; they decided to get out; they hadn't sold the business, they just closed out. Bills had reached the point where it wouldn't carry itself. I asked her if the earnings of the restaurant had been good prior to 1933. She said very good, that they had the largest place in Denver, but it reached the point where it couldn't carry itself. It wasn't good then. That was about the time of the bank moratorium, when everything stood still. I asked her: "How

much money had you and your husband accumulated and saved at that time, in 1933, when you closed the restaurant business"? She said: "Mr. Holland had a hundred and four thousand dollars. We had a hundred thousand dollars during the bank moratorium. We kept the four thousand after that." I asked her if the money was invested at that time. She said no, it was their savings, and it was in the form of currency. I asked her how the money had been accumulated. She said Mr. Holland saved it out of his business. I asked her where the money was kept. She said: "Well, we took care of it. We have never talked about this, and I don't like talking about it now." I asked her: "Did you have access to the money"? She said "sure." "Did you ever count it"? She said "No." I asked her what happened to the money. She said Mr. Holland used it in his business when he decided to settle down. "We saved that money for the purpose of establishing himself when he felt the time was right. We never felt the time was right before, is why we never touched the money."

157 I asked her if they made any additional accumulation of money after 1933. She said they saved all the time until they went in business. I asked her: "Do I understand you to indicate that you hadn't spent any of it prior to 1946? Spent or invested it"? She said: "The hundred thousand dollars"? I said "Yes." "No, we never touch that." I asked her: "How do you know there was a hundred thousand dollars"? "We put that away with the idea of never touching it until we were ready to use it. That was our goal." I asked her what the source of money was that was deposited in the personal account, in the U. S. National Bank in Denver. She said that was from their savings. I asked her if it was the currency we'd been talking about. She said: "Well it might be." I asked her if she knew whether or not any of the savings went into the Golden bank. She said it may have occasionally when it was necessary to cover some checks. I then gave her the 1948 income tax return, which was a joint return of Marion L. and Ethel E. Holland, and asked her to identify her signature on that return. She stated that it looked like her signature. I asked her: "By whom was the return prepared"? She said: "Mr. Dulaigh. He made it right from his books." Mr. Garvin asked her then with regard to

saies, where the figures were taken from. She said: "I balance each register each morning. Then I combine them and make that report to Mr. Dulaigh."

Q. Now prior to the formal conference which you had with Mr. Holland, did you have an earlier conference with him?—A. Yes, I did.

158 Q. When was that?—A. Well that was the day I first met Mr. Holland. It was on September 14th, 1949.

Q. And where was that?—A. At the Holland hotel.

Q. Who was present?—A. Marion L. Holland, Garvin, Revenue Agent, a man by the name of Ballingall who was a Special Agent, and me.

Q. Now preliminary to any discussion of tax matters, what if anything was said?

Mr. Bruno: Now if your honor pleases, I am going to have to object to this line of questioning at this time, until the corpus delictis of the crimes charged in this indictment have been established. The law is quite clear on that point.

The Court: Well I'm not sure that I understand your point, counsel.

Mr. Bruno: Well if your honor pleases, before any admissions, and I take it these are admissions, any statement of the defendants can be admitted in evidence for any purpose, the corpus delictis of the several crimes must be made out by independent testimony. So far I haven't seen any such testimony.

The Court: I don't believe that's the law. The crime can be proved by his own admission, can't it?

Mr. Bruno: Would your honor like to have some authorities on that point?

The Court: Well you can give them to me briefly. I'm not going to interrupt the trial very long for that.

159 Mr. Bruno: If your honor will just give me a minute to look at my brief—my trial brief.

The Court: What you will have to show me, counsel, is a finding either in the Circuit or in the Supreme Court of the United States.

Mr. Bruno: Well if your honor pleases, I refer you to a case in another circuit. It's the United States against Chapman.

The Court: Well let's take a look at it.

Mr. Bruno: Now I don't have the case. Your Honor knows we can't take them out of the library. I just have my brief.

The Court: Well, will you get me it? While I take a look at that, we'll have a recess for the jury.

Don't talk about this case, Ladies and Gentlemen of the Jury, while you're out of the courtroom.

* * * * * *

The Court: Objection is overruled. You may proceed.

A. Well this was, I believe, Wednesday. I had the date of this—

Q. The question was, what was said.—A. Mr. Garvin and I were introduced to Mr. Holland. Mr. Holland stated that he had talked to his attorney, Mr. Apple; that the attorney told him to tell the examining officers about
160 his cash on hand.

Q. Now will you just tell us what was said at that time?—A. Mr. Holland said he had currency of approximately thirty thousand dollars on hand December 31st, 1948; that he had about a hundred fifty thousand in April, 1946, when he purchased the hotel, forty thousand of which was in his bank account, and a hundred and ten thousand of which was in currency in a black canvas bag. He said he'd been in the restaurant business for many years in Denver, Colorado, and that the hundred and fifty thousand dollars represented his life savings. He said that his tax consultant, Mr. Dulaigh, did not know anything about his affairs except what the books showed, and he asked that we discuss things not on the books with him, Mr. Holland, personally. He said that they kept about eigth hundred dollars in the cash registers in the hotel, plus some small change to back them up, but he kept more in the safe for cashing checks; that he carried five thousand dollars insurance on the money, and occasionally over the weekends the receipts would make a total of five thousand dollars.

Q. Now between the time of this conference, and the formal conference which you had with him, did you have any other conferences?—A. Yes.

Q. When was that?—A. On September 20th, 1949.

Q. Where?—A. Room 14 of the Holland Hotel,
161 Golden, Colorado.

Q. And who was present?—A. Marion L. Holland, Willis E. Stout, a Special Agent, Garvin, Internal Revenue Agent, and me.

Q. Now will you tell us what Mr. Holland told you on that occasion?—A. Well Mr. Holland said that he had discussed this entire ma ter with his attorney before giving us any information; that his attorney had advised him to give us the complete story of his financial affairs. On that occasion I asked him about his net worth on April 1, 1946, just prior to the acquisition of the La Ray hotel. He said his net worth was one hundred fifty-eight thousand dollars, consisting of three items; currency in the amount of one hundred and four thousand dollars, which he had since December 22nd, 1933, when he quit the restaurant business; currency in the amount of nine thousand dollars, five thousand of which Mrs. Holland had saved from her salary, and four thousand which he personally had accumulated; and forty-five thousand dollars which was on deposit in the U. S. National Bank, and represented proceeds from the sales of stocks. He said his only liabilities were those of the corporations which became defunct in 1933; that the corporation owed thirty-five thousand to thirty-seven thousand dollars for recent purchases from wholesale houses. He said no payments had been made on these bills since 1933. He stated that he had been sued by landlords and questioned in court relative to his assets; that he had
162 kept the possession of his currency covered up. He further stated that the currency had been accumulated prior to 1933, most of it representing money which he had taken from the restaurant cash registers and deposited in the safe. He stated that at the time the big bills were discontinued he took the old currency to the bank and secured small bills in packets of one hundred dollar denomination. He said he didn't change it all at one time. He made several trips over a period of a few months to the U. S. National Bank and Title Guaranty, but that prior to Decem-

ber, 1933, it had all been changed to one hundred dollar bills. He related that he never took it out again or used it in any manner until 1946. He stated that prior to 1934 he kept the money at his residence. After he went to Casper in 1934, he put it in a safety deposit box, or vault; that he had a vault in one of the banks, and sometime during his stay in Casper he changed the vault in another bank. In the Wyoming National Bank he kept a box under an assumed name, Monroe, because he was still attempting to conceal the money from his creditors. He explained that Monroe was his grandfather's name on his mother's side. When he left Casper he brought the money with him to Denver and kept it at the apartment at 1st and Bayaud Avenue. When he went to Billings he said he kept it in a rented room in a private residence, but he couldn't remember the address of that residence. After he'd been in Billings about a year and a half, Mrs. Holland came there from Denver, and they moved into an apartment house.

He wasn't able to remember that address, but stated
163 that during the balance of their residence in Billings, the money remained in the apartment. After leaving Billings they returned to Denver, bringing the money with them in their suitcase. They lived in various hotels, five days at a time. He explained that that was the limit then being imposed by the hotels. Due to their inability to secure rooms, they lived part of the time with his wife's relatives at 321 Fox Street. Mr. Holland stated that the money was kept in his room at all times. After he secured employment at the La Ray hotel in Golden, he kept the currency in his room there.

He stated that he had never at any time put it into a safety deposit box while in Denver. He first stated he never had a safety deposit box in Denver, and then later remembered he did have one in the U. S. National Bank with nothing in it. He stated he started using the currency in 1946. He said he deposited most of it in the U. S. National Bank, when he wanted to write a check for a large deal; that he didn't remember depositing any of it in the Golden bank; that it would be a small amount, if any, and probably none; that he had paid for property with currency; that he secured receipts for those payments, but he

wasn't sure that he'd be able to locate them. He said his attorney examined the deeds but was not present at the time of the settlement.

He was asked to name the specific purposes for which he used the currency. He stated it was deposited in the U. S. National Bank and used, also used, to purchase the coffee shop, the residence at 815 Thirteenth Street, the residence at 1500 Ford Street, the skating rink, the horse
164 barn, and the final currency was used in the purchase of a lot across the street from the hotel. He stated that all during these years the currency was kept in a metal box. He volunteered the explanation that he had not used the currency to pay off his loan on the hotel because he was not certain it would be a profitable venture, and if it should fail he didn't want his currency to be tied up in it.

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Cross Examination by Mr. Zarlengo.

165 Q. Mr Bodley, you say that you've been with the Internal Revenue since 1925?—A. 1945.

Q. 1945. When did you first meet Mr. and Mrs. Holland?—A. On September 14th, 1949.

Q. And where did you meet them at that time?—A. At the Holland hotel.

Q. Who was with you?—A. Well, you have my memorandums of interviews. I remember that one. Mr. Garvin, Mr. Baliingall, and myself.

Q. Are they Internal Revenue men?—A. They are.

Q. And did Mr. Holland have any attorney there at that time?—A. He did not. But as I testified, his opening statement was that he had talked to his attorney prior to the time.

Q. And his attorney had told him to tell you about this cash reserve fund that he had on hand?—A. Yes. Mr. Apple, he said, was his attorney.

Q. And to give you all the facts concerning the accumulation of this money?—A. That's what Mr. Holland said.

Q. And during all these interviews that you have testified about, the Hollands were very cooperative weren't they, Mr. Bodley?—A. The Hollands talked to us. The Hollands

made their records available. The only question of
166 cooperation which I have in my mind was whether they always told us the truth about their currency, or not.

Q. But whatever records you asked for, they gave you, is that right?—A. That's right.

Q. If you told them you wanted to see their books they made them available?—A. Yes, they did.

Q. And any records that you inquired about or wanted to see, they made that record available to you for inspection?—A. Well they made the books generally available. They didn't—this item of the question of receipts for the currency payments—I don't think they ever presented those.

Q. What do you mean, receipts for the currency payments?—A. Mr. Holland said he thought he had receipts for all the money he had paid out in currency.

Q. He told you he didn't have all those receipts?—A. Well, he told us he wasn't sure he could find them or not.

Q. But whatever records or books that he had for income tax returns, or anything of that kind, he made available to you?—A. Yes.

Q. And he answered all questions that you asked him, did he not?—A. He did.

Q. And he did that on more than one occasion?—
167 A. He did.

Q. As a matter of fact, when you brought the reporter there to take down this statement that you read from so extensively, you told him he was entitled to a lawyer?—A. That's right.

Q. And he told you he didn't think it was necessary for him to have a lawyer; that he was ready to give you a full statement of everything he knew about this matter?—A. He did.

Q. And you questioned him at great length at this time, did you not, Mr. Bodley?—A. I did.

Q. And that was all reduced to writing?—A. It was.

Q. Approximately how many pages did that statement contain? That one of October 25th, 1949.—A. Well, I can't tell you that from memory, but it was quite a few.

Q. Quite a number of pages?—A. Yes.

Q. And although you read from the statement, you did not read the entire statement, is that correct?—A. That is correct. I read only portions of it.

Q. Do you recall in that statement he told you that he had accumulated considerable gold in the operation of his business?—A. No. I don't recall any reference to gold at the time of the formal statement.

168 Q. I am speaking of the formal statement of October 25th, 1949. Didn't he tell you that in the operation of his business he would receive gold money and that he would always accumulate that? He referred to it as "pretty money." Do you remember that?—A. Yes, I remember that. I don't remember on just what occasion he told me, but I remember him telling me about that.

Q. Will you take a look at the statement, on page 13?—A. All right.

Q. Page 13, Question 147. I'll ask you whether you didn't ask him this question. We'll go to 146 first. "When did you convert it to hundred dollar bills"? Answer: "From time to time." Question: "As is was accumulated"? Answer: "No. If I had a hundred dollar bill I seldom ever deposited it if it was taken in in the operation of my business. If I could afford to take it out I took it out. Some of it was in smaller denominations. Through the 20's I accumulated some big currency which I changed to up to date currency from time to time. I had some gold in the 20's that I exchanged into currency when the gold was called in. I never deposited a gold dollar in my life. Any gold that ever came into my business was "pretty money" and I just put it away. There was a time in the 20's when I used to get quite a bit of it." Do you recall now that he told you that he had accumulated, that he had a considerable amount of gold money?—A. Well, yes. You just read the statement.

Q. And that is one of the statements that he gave to you at that time?—A. Yes.

169 Q. Did you enquire into how much of this gold money he turned in when the Government called in the gold?—A. No, I did not.

Q. Do you recall him mentioning something about ten to twenty thousand dollars in gold that he turned in to the various banks when the president called the gold in?—A. Yes, I recall him saying something about that.

Q. And he told you that when the president called in all the gold that he had accumulated some ten or twenty thou-

sand dollars of it, and that he turned it over to different banks in Denver? Do you recall that?—A. Yes.

Q. And he told you the names of the banks where that money was turned in, didn't he?—A. Well he told us the names of the banks where he changed his large sized currency to the smaller size. He may have told us about the gold. I don't remember.

Q. You don't recall? Well, when he told you of some twelve thousand dollars in gold that he had accumulated in the 20's which was changed for currency because the Government called in the gold, didn't you enquire into what banks he turned that gold?—A. I can't remember whether I did or not.

Q. And you didn't check with these banks to find out whether this gold was turned in by the Hollands?—A. No.

Q. Or how much gold he had on hand back in the
170 20's?—A. No. As I remember, one of the banks he referred to was no longer in existence.

Q. Well how about the Colorado National Bank? That's still in existence, isn't it?—A. Yes.

Q. You didn't enquire there?—A. No.

Q. Or any one of the other banks that are still in existence?—A. No.

Q. Now getting down again to this statement of October 25th, 1949. You have that complete statement here, haven't you?—A. Yes, sir.

Q. May I have that please?—A. That is a copy. Would you like the original?

Mr. Zarlengo: I'd like to offer the entire statement in evidence, your honor, so we'll not have only a portion in the record.

The Court: All right. It will be received.

Mr. Chittim: No objection.

Mr. Zarlengo: And the same with Mrs. Holland's statement.

Mr. Chittim: No objection to that either.

The Court: All right. It will be received.

Q. Mr. Bodley, I hand you Defendant's Exhibit 10. Will you tell us what that is, please?—A. This is a tran-

171 script of the testimony of Marion L. Holland, taken in Room 1 of the Holland House hotel on October 25th, 1949.

Q. And that is the entire transcript of all the questions and all the answers on that date?—A. That is right.

Q. And I now hand you Defendant's Exhibit Number 11. —A. That is the testimony of Ethel E. Holland, taken in Room 1 of the Holland House hotel, Golden, Colorado, on October 25th, 1949.

Q. That's a complete transcript of all the questions asked Mrs. Holland and the answers given by her?—A. During that formal interview, yes.

Mr. Zariengo: I now offer in evidence, your honor, Defendants' Exhibits 10 and 11.

The Court: They will be received.

Q. Now you questioned Mrs. Holland as to how the report was made for their accountant, their tax expert, Mr. Dulaigh?—A. Yes, I did.

Q. And she demonstrated to you exactly how that was done, did she not?—A. Well, of course she referred to the envelopes which she prepared; the cash envelope in which she recorded her daily receipts, her cash register readings, and in those envelopes, as I remember it, they put the cash paid out slips, and she furnished these to Mr. Dulaigh, the accountant.

Q. She showed you this daily cash report that
172 she prepared every day for the tax man, did she not? —A. Well I saw many of them.

Q. And you saw many of those daily reports?—A. Yes.

Q. And the cash pay-outs were attached to that report, were they not?—A. As I remember it, I think they were. Yes, they were attached—made a part of it.

Q. Mr. Bodley, of course this isn't for the particular day we're referring to, but Exhibit 12 is a Daily Cash Report. Is that the daily report that she showed you?—A. That's a 1953 form.

Q. They were using the same type of form?—A. Either the same, or something very similar to it.

Q. And that daily cash report had the date, and it showed the cash receipts and the cash disbursements, did it not?—A. That's right.

Q. And that was prepared every day by Mrs. Holland?—A. That was my understanding.

Q. That was the general pattern, and there was a breakdown of the receipts, and where they came from?—A. Yes.

Q. And the disbursements were also placed on that daily report?—A. Yes.

173 Q. And then with the daily report that she sent to the accountant, she attached, did she not, the cash pay-outs that she made during the day?—A. That's my understanding.

Q. And those were all put in an envelope and turned over to Mr. Dulaigh, the accountant?—A. That's right.

Q. Isn't a fact, Mr. Bodley, that Mr. and Mrs. Holland told you that it was satisfactory with them if you would have one of your men come there and check their cash registers from day to day to check those receipts, to see if they weren't about the same as they had reported?—A. They may have said that. I don't remember it. It wouldn't have seemed very pertinent because it wouldn't have applied to the years we were examining.

Q. But they did tell you that if you wanted to have your man check their cash registers that it was all right with them to have a Government man there every day checking those cash registers, isn't that true?—A. Well, I don't remember. They may have.

Q. They may have done that?—A. They may have, yes.

Q. Of course you say it wasn't for the years under investigation, but you didn't question them until 1949, isn't that right?—A. That's right.

Q. So this was the first time they had an opportunity to offer you a check on the cash registers?—A. Yes.

174 Q. And as far as you know, you never availed yourself of the opportunity?—A. I didn't check them, no.

Q. Now you were telling us about this statement of October 25th, 1949. You asked them when they bought the Holland House?—A. Yes.

Q. They told you April 1st, 1946?—A. Yes.

Q. And that was correct?—A. Yes.

Q. And then you asked them what they paid for that hotel? And they told you the downpayment was thirty thousand dollars?—A. Yes.

Q. That was paid, ten thousand when the contract was signed, and an additional twenty thousand on the principal when the deed was delivered, isn't that right?—A. Well I don't believe they gave me that in detail. They said they paid thirty thousand dollars and signed a note.

Q. And your investigation revealed that that was true? —A. Yes, it did.

Q. That they did pay thirty thousand. And they told you they paid that by check, didn't they?—A. Yes, I believe they did.

Q. And that they executed a mortgage for the
175 balance?—A. Yes, sir.

Q. And that mortgage became due on January 1st, 1947?—A. Well, I don't remember whether we discussed the due date or not.

Q. I see. But your investigation showed that that was true?—A. Yes, it did.

Q. Then you asked them about what liabilities they had, did you not?—A. Yes, I did.

Q. And they told you about this twenty-five thousand dollars they owed, did they not?—A. They did.

Q. And that was true, was it not?—A. Yes, it was.

Q. And they told you about the twenty-five hundred dollars that he paid to Brown Cannon previously?—A. Yes.

Q. That was true, was it not?—A. Substantially so. There was a slight error in the amount. The actual payment turned out to be two thousand two hundred and fifty dollars.

Q. Well he was relying on memory, and he told you approximately twenty-five hundred?—A. I don't believe he tried to deceive us as to the amount.

Q. And that was something that occurred back in 1946, was it not?—A. Yes, it was.

176 Q. And he told you that he had purchased five horses?—A. Yes.

Q. And that was correct, wasn't it?—A. Yes.

Q. He told you that he had thirty thousand dollars cash left on hand did he not?—A. At the end of 1948?

Q. At the end of 1948. And did you ask to see that thirty thousand dollars cash?—A. Well, but he didn't tell us he had thirty thousand dollars cash at the time we were talking to him in 1949.

Q. Did you ask him how much he had on hand at the time?—A. I am sure we did.

Q. How much did he tell you he had on hand?—A. Just what he had in the safe and cash registers.

Q. Well, now, he told you that he had accumulated this currency during the period of his entire life, did he not?—A. Yes.

Q. Do you know how old he is?—A. Yes, he told me the date of his birth and the place of his birth, as I remember. I can refer to the statement. He was born in 1889, which would make him 64 years old.

Q. And he told you about all the different places where he had worked, didn't he?—A. He gave us very complete detail about his history.

177 Q. Yes. Now, Mr. Bodley, if you will pardon the interruption a minute, you stated that you did ask him about what money he had on hand in 1949?—A. Well, I am sure we did.

Q. Well, now, can you point out in this statement that's been introduced in evidence, or any other statement, where you asked him that question?—A. Well, in one of these statements—you have the two of them now, and I don't have them.

Q. Well here they are, right here.—A. Will you restate your question again please?

Q. Well you made a statement here awhile ago that you asked Mr. Holland how much cash he had on hand at the time of your interview, and he told you that all he had was in the cash register. Now will you point out in any of these statements that you have taken, where you asked him that question?—A. Well, as I said, you have two of the statements. As I remember, in one of the statements there was a statement that he had used the last of the currency to purchase the lot across the street. And that was in the past tense. He had done that before we talked to him.

Q. Will you point out now, in any of these statements—which ones do you want?—A. Here it is. "The final currency was used in the purchase of the lot across the street from the hotel."

Q. When was that?—A. Well that was prior to the time we talked to him.

178 Q. What's the date of that?—A. The date of the statement, or the date of the purchase?

Q. Well my question was, can you point out when you asked him that question as to what cash he had on hand the day you went there.—A. Well I can answer that, but not in these statements that you have.

Q. Then as I understand it, there is nowhere any written statement where you asked him that question?—A. Oh, yes, there is another interview which hasn't been introduced in evidence.

Q. Well my question was to pick out any statement that he had made, and point out where you asked him how much cash he had on hand when you questioned him.—A. This is on September 19th, 1949.

Q. All right. Read the question.—A. Now the question isn't here. This is a memorandum of interview.

Q. There is no question then, as I understand it?—A. This is a memorandum of the interview which took place.

Q. A memorandum of the interview, but it is signed by the Hollands?—A. No.

Q. You didn't take it down in question and answer form as you did these others? Is that right?—A. No. Not with the recorder.

179 Q. You didn't have it reported then?—A. That's right.

Q. Well the Government has a recorder for the very purpose of taking down these questions and answers, doesn't it?—A. Oh, yes.

Q. But you didn't have him there at that time?—A. Not on that day.

Q. And at no time did you ask him that question when there was a reporter present, or when you had it reduced to question and answer form?—A Well these questions and answer statements speak for themselves. That's the only formal questioning that I did, and I don't recall at the moment asking him specifically. I asked him what assets he had as of December 31st, 1948, but as of that date I did not.

Q. You did not?—A. Probably not. But, as I say, we did on this other occasion.

Q. Well that's some kind of a memorandum that you've made?—A. Yes, sir.

Q. Unsigned by the defendants?—A. Yes, sir.

Q. Not recorded by the regular recorder?—A. No, sir.

Taken from my notes which I made during the interview.

Q. Well, then, Mr. Bodley, as I understand it you never did ask him to show you the money he had on hand on
180 that date?—A. No, I did not.

Q. You did not?—A. There wasn't enough at issue.

Q. Just answer my question. Is your answer yes, or no?—A. No, I didn't.

Q. You didn't ask him to show you the money?—A. No.

Q. Now he gave you a very complete history of all the different places where he had worked, didn't he?—A. He did.

Q. And he told you that he had bought and sold real estate over the years?—A. He said that he had bought and sold real estate in the nineteen twenties.

Q. In the nineteen twenties. And he told you that he had made a profit out of buying and selling real estate, did he not?—A. Yes.

Q. And he told you where these different pieces of real estate were?—A. I don't recall that he detailed it any further.

Q. Well did you ask him where these pieces of real estate were that he bought and sold at a profit?—A. I don't remember whether I asked him the addresses or not.

Q. Did you check the records of the County Clerk & Recorder to find out what pieces of property were bought and sold?—A. We did check the records, both in Denver and in Golden. I can't tell how far back. I don't
181 remember.

Q. Well he told you it was back in the twenties when he was buying and selling real estate at a profit, and held it on hand, didn't he?—A. That's right.

Q. Now you say that you did check the records to see what real estate was purchased in Denver County?—A. We checked the County Records, yes.

Q. Did you check them during the twenties?—A. I am not sure about that.

Q. Well what period of time did you cover in checking these records of the County Clerk and Recorder's Office?—A. Well, certainly we covered the current years. I'm not sure how far we went back on the real estate transactions.

Q. Well do you have that record here with you so that

we'll know?—A. I think my record—I do have a record—I don't know what period it covers.

Q. Where is that record?—A. It's with certain exhibits.

Q. Well will you examine it and tell me what years you checked to determine what properties were bought and sold by Mr. Holland?—A. Well, we checked Jefferson County, from 1944 through 1949.

Q. 1944 to 1949 in Jefferson County. All right. Now how about Denver County?—A. Well apparently I haven't included that with the exhibits. We found nothing,
182 at least, pertinent to the years—

Q. That isn't my question. My question is: What years did you check in the records of the County Clerk & Recorder of Denver County to determine what properties were bought and sold by Mr. Holland?—A. I don't remember that.

Q. Do you mean you did or did not check it?—A. Probably I didn't personally. Some other agents worked on this case with me.

Q. Did any other agents check it that you know of?—A. Another agent made quite exhaustive searches of the records at the City & County of Denver, particularly in reference to old law suits.

Q. I'm not talking about lawsuits. I'm talking about the properties bought and sold by Mr. Holland.—A. Well I don't remember what he covered.

Q. You don't know what he covered, or whether he covered it at all, is that right?—A. That's right.

Q. Well, now, as I understand it, Mr. Holland told you that at the end of 1933 he had cash on hand of a hundred and four thousand dollars, did he not?—A. He did.

Q. Now he told you that that cash had been accumulated over a lifetime?—A. He did.

183 Q. And he told you that about twenty or twenty-one thousand dollars of that cash was made by buying and selling real estate, did he not?—A. He said that he had made considerable money buying and selling real estate.

Q. And that the real estate that he bought and sold and the profit that he made was set aside in this cash fund, didn't he?—A. Well he indicated that was the source of part of it.

Q. And he told you that most of this was bought in the twenties, and a lot of it in Denver County, didn't he?—A. Yes, he did.

Q. Then as I understand it, you did not check to find out how much real estate he bought and sold in Denver County during this period?—A. I did not personally.

Q. And as far as you know, no one else did?—A. I am not sure about that.

Q. All right. Well, then, he told you that in addition to the profit that he had made on buying and selling real estate, that he had made money on the stock market, didn't he?—A. He did.

Q. Buying and selling stocks?—A. He did.

Q. And did you check the records with these brokerage houses to find out what stock he bought and what stock he sold?—A. I did.

184 Q. Over what period?—A. I went back as far as we could find records available.

Q. Which brokerage house did you check?—A. Well we checked all of them in Denver, I'm sure of that. We found records that Harris Upham Company had, and then another company which they had taken over—bought out.

Q. And you found that he had bought considerable stock, and sold it?—A. Yes.

Q. And had made a profit on much of that stock?—A. Yes, he made a profit.

Q. He made a profit, and he told you that the profit that he made on that was also set aside in this cash fund, did he not?—A. Well, his extensive dealings that we were able to locate were in years subsequent to 1933. We found no records prior to 1933.

Q. But it was before 1946, was it not? January 1st, 1946?—A. Yes.

Q. So that before January 1st of '46 he had bought and sold at a profit many shares of corporate stocks, is that right?—A. Yes, he did. His greater purchases were still on hand in 1946. He held stock then.

Q. He held stock on January 1st, 1946?—A. Yes.

Q. A considerable number of shares of stock?—A. Well it had a total cost to him of around twenty-six or

185 twenty-seven thousand dollars.

Q. And those were all on hand on January 1st, 1946?—A. They were.

Q. But as I understand your testimony awhile ago, your check revealed that he had sold and bought some stock before that time, and made a profit?—A. Yes.

Q. That's true, isn't it?—A. That's right.

Q. And in his statement to you he told you that nine thousand dollars was accumulated from 1933 to 1946, did he?—A. Yes.

Q. And that came from savings and from profits that he made on these various enterprises, isn't that right?—A. Yes, he said he had accumulated it from his income.

Q. Now he told you about his dealings in the market, not only as far as stocks are concerned, but also grain, didn't he?—A. I don't remember much conversation about the grain market. He may have said something about it. Mr. Holland said that he was an authority on the stock market.

Q. Yes. And did you check any of his grain dealings on the market?—A. I found no records of any.

Q. Well did you check to determine if there were any?—A. As I said, we checked all these brokerages here in town. I also checked some up in Casper, and I went back as far as I could find records, or they had records, and I found no grain transactions.

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Q. Now Mr. Holland told you that this hundred and four thousand he had on hand in 1933, which he augumented by nine thousand dollars from 1933 to 1946, that he used a portion of that to accumulate various properties, didn't he?—A. Yes.

Q. And he told you about some of the properties that he bought, didn't he?—A. Yes.

Q. What properties did he tell you he bought?—A. Well he told me he had bought the two residences, at 1500 Ford Street and 815 Thirteenth Street, the skating rink, which was a building in Golden. He told me about the hotel.

Q. Well those statements that he made to you were all true, weren't they?—A. Yes.

Q. And he told you about this Fred Landry property, this house at 815 Thirteenth Street?—A. Yes, he did.

Q. That he purchased for ten thousand dollars.—A. Yes.

Q. And you found out that his statement that part of that was paid in cash was true, didn't you?—A. Well, yes. He paid for part of that in cash.

Q. In other words, the first payment of six thousand, four thousand of that was in cash, wasn't it?—A.
187 As I remember it.

Q. And on the second payment of four thousand dollars, it was two thousand by cash and the balance by check?—A. Yes, as I remember now there was a part payment in each instance by check and the remaining portion in currency.

Q. And how about Larned? These five city blocks on Tenth Street for three thousand dollars?—A. Yes, he did.

Q. And that was all paid in cash, wasn't it?—A. As I remember it.

Q. And these payments that were made to the Golden Savings & Loan Association. Many of those were in cash, were they not?—A. Yes, they were. That was the testimony which I received.

Q. So that his statement that much of his cash was used to purchase various properties you found to be correct, did you not?—A. Well I found he had paid cash to buy property, yes.

Q. And he told you accurately what properties he bought and who he bought it from, and how much he paid for it?—A. He did.

Q. Mr. Bodley, I hand you Defendant's Exhibit 13, and will you tell us what that is?—A. That is a memorandum of interview with Marion L. Holland on September 14th, 1949, at the Holland hotel, Golden, Colorado.

Q. Was that the first interview that you had?—A. That was the first day I met Mr. Holland.

Q. And it was the first time you talked to him
188 about this matter?—A. It was.

Q. And on that day he stated that he had talked to his attorney, Mr. Apple, and that the attorney told him to tell the examining officer about his cash on hand? Is that right?—A. Yes.

Q. He said that he had currency of approximately thirty thousand dollars on hand December 31st, 1948, and that he

had about a hundred and fifty thousand dollars in April of 1946 when he purchased the hotel, forty thousand dollars of which was in his bank account and a hundred and ten thousand of which was in currency in a black canvas bag. Is that what he told you?—A. That's what he told me.

Q. He said he'd been in the restaurant business for many years in Denver, Colorado, and that the one hundred and fifty thousand dollars represented his life savings?—A. That's right.

Q. Mr. Holland stated that he kept about eight hundred dollars in cash, plus some small change to back him up, and he kept more in the safe to back him up, and that occasionally over the week end the receipts would make the total over five thousand dollars?—A. Yes.

Q. Do you remember Mr. Holland telling you about a restaurant that he had sold three or four times? The same restaurant? That he would take a down payment of five thousand dollars, and then when they defaulted on their payments it became necessary for him to take it back, and
189 he sold it a second time, and a third time?—A. Well I don't seem to remember much about that. He may have.

Q. And he made a profit of fifteen thousand dollars doing that on this one particular restaurant? Do you recall that, Mr. Bodley?—A. I don't recall much about it.

Q. Do you recall whether you asked him that question in the statement?—A. No.

Q. Do you recall whether he told you about it?—A. No, I don't recall it.

Q. Now his income tax reports for the years 1946, '47, and '48, the three years in question, were prepared by a tax consultant, were they not?—A. That was the evidence which we obtained.

Q. Well that's what the reports show, do they not?—A. Yes.

Q. Prepared by Mr. Dulaigh?—A. Yes.

Q. Refreshing your memory, on page 20 of the statement of October 25th, 1949, question 230—question 229. "When did you start in the restaurant business?" Answer: "In 1921" Question: "Where was that?" Answer: "1444 Champa Street." Question: "Did you purchase the restaurant there"? Answer: " Yes."

Question: "How much did it cost?" Answer "I
190 "don't remember" and then later a correction.
Now look at Question 223. "How long were you at that location"? Answer: "I think I operated it myself. I don't know if it was two or three years, and then I sold it and resold it three or four times before I finally got it sold on payment of half down. I sold it for—I want to go and make a statement to you to the best of my recollection I paid fifty-five hundred for that place. It seems to me that is the figure, and I resold it for ten thousand dollars about four times, I think, and I got half cash and had to take it back."—A. That's correct. That part.

Q. So on that one restaurant then he realized a profit of something over fifteen thousand dollars, isn't that correct? —A. Well that's what he said. I didn't verify it.

Q. Well did you check up to find out whether his statement was correct?—A. I don't recall making any particular check.

Q. In other words, you didn't check the records to determine the number of times it was sold, and what he sold it for?—A. No.

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191 NELSON R. AREGOOD, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—A. Nelson Aregood, junior.

Q. Where do you live?—A. 7005 West 35th Avenue, Wheatridge.

Q. What is your business, or occupation?—A. Controller, Security Life & Accident Company.

Q. As such, do you have custody and control of the records showing the payments of premiums on policies for that company?—A. Yes, sir.

Q. Do your records show, during the year 1948, any policy held in that company by either M. L. Holland or Ethel E. Holland?—A. Policy Number 128960 was held by Mrs. Ethel E. Holland, and our first premium entry was made on November 10th, 1948.

Q. November 10th, 1948. Do your records show when that policy was purchased?—A. The date of application of that policy was taken on October 21st, 1948.

Q. Do your records show through whom it was sold?—A. It was Mr. T. C. Hitchings, our Agent.

Q. What is the premium which your records show paid on November 10th, 1948?—A. $1,183.25.

192 Q. Now was there any other policy?—A. The other policy is Policy No. 128959, owned by Mr. Marion Luther Holland.

Q. When was that policy issued, and through whom?—A. The application was signed on October 21st, 1948.

Q. And through whom was it sold?—A. T. C. Hitchings.

Q. Now was there any premiums paid on that? Did you state to whom the policy was issued?—A. Issued to Marion Luther Holland.

Q. Was there any premiums paid on that policy, according to your books, during the year 1948?—A. Premium paid was $1,426.25.

Q. When?—A. We recorded it on our books November 10th, 1948.

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Cross Examination by Mr. Bruno.

Q. Mr. Aregood, those policies were issued pursuant to application?—A. Yes, sir.

Q. The applications were both dated October 21st, 1948?—A. Yes, sir.

Q. Your company made an investigation with respect to the Hollands before you issued those policies?—A. Yes, sir.

Q. Your company was satisfied, was it, with the investigation that you made.—A. Yes, sir. We issued a policy.

193 Q. Now, Mr. Aregood, these policies of insurance on the lives of these two people were written through Mr. Hitchings?—A. That is correct.

Q. Who is in the real estate business?—A. That is correct.

Q. Were they required as additional security for a twenty-five thousand dollar loan which the Hollands obtained from Mr. Hitchings? Can you tell us, Mr. Aregood?

—A. I don't believe I can tell you that. I might be able to tell you.

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H. O. VOIGHT, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name?—A. H. O. Voight.

Q. Where do you live, Mr. Voight?—A. 1521 Grape, Denver.

Q. What is your business?—A. I am cashier of the Denver branch office of the New York Life Insurance Company.

Q. As such, do you have custody of the records showing transactions of that company in Denver with other people?—A. Yes, I do.

194 Q. Did you bring your records with you?—A. Yes, I did.

Q. Do those records show any transactions between your company and M. L. Holland?—A. Yes. Our records show that there are two policies in force on Marion L. Holland.

Q. Now you refer to two policies. Take one of those. When was the first one issued?—A. The first one was issued to take effect November 24th, 1936. That's for five thousand dollars, on the ordinary life plan.

Q. Now you referred to a second one. When was that issued?—A. The second one was issued to take effect May 6th, 1946, and that is also for five thousand dollars.

Q. Now can you tell us from your records what premiums were paid out for those policies during the year 1946?—A. Well, on the first policy, the one that was issued in 1936, there was a premium paid February 18th, 1946. That was a quarterly premium of $56.70. And then in May of 1946, the premium payments were changed to the annual basis, and an annual premium of $213.95 was paid May 15th, 1946. And that's all that was paid in 1946.

Q. On the first policy?—A. Yes.

Q. Now while you're at it, will you tell us what was paid on the first policy for the year 1947, or during

195 the year 1947?—A. Well, the 1947 premium, due

in May of $213.95, was paid on our records June 23rd 1947. Dividends however were deducted and applied toward the payment of that premium. The dividends amounted to $52.25, which made a net amount of $161.70 that was paid in connection with the main 1947 premium. And then in May, 1948, a premium of $213.95 was reported paid at our office on May 24th, 1948.

Q. And what was the amount of it?—A. $213.95.

Q. Now take the second policy. What premium was paid upon that in 1946?—A. The annual premium for that policy is $531.90. A payment of $250.00 was made on May 16th, in connection with the first premium, and the balance of that first premium, amounting to $281.90, was paid May 23rd of '46.

Q. Now what payments were made on that second policy during the year 1947?—A. The 1947 annual premium of $531.90 was reported paid June 6th, 1947, and the 1948 premium of $531.90, less a dividend of $53.20, was paid May 24th, 1948.

Q. Now do your records show whether there were any loans against these policies?—A. During those years? During '46, '47?

Q. Let's take the first policy. Do you have records which show any loans against that policy since the time it was taken out?—A. Well, the first policy, yes. There was a loan of $440.00 that was made in November of 1941, and that loan was repaid May 10th, 1946.

196 Q. Now were there any loans against the second policy?—A. Not during those years. Not prior to 1948.

Q. Well was there any loan in 1948 against it?—A. No.

Q. Now what was the amount of interest on this loan you have referred to?—A. Well the annual interest was $26.40.

Q. What was the rate of interest?—A. That's at the rate of six percent.

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Cross Examination by Mr. Bruno.

Q. Mr. Voight, just one question. The policy of November of 1936. Did it have a cash surrender value?—A. Yes.

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Direct Examination by Mr. Chittim.

197 Q. Just before the recess, Mr. Voight, you were asked whether the insurance policy issued in 1936 had a cash value, and you stated that it did. Will you tell me what that cash value was at the beginning of 1946?—A. Well, 1946—as of November 24th, '46, the cash value was $1,020.00.

Q. What was the value in 1941?

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198 J. E. McCLOSKEY, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

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199 Q. What is your work, or occupation, Mr. McCloskey?—A. Fred Davis Furniture Store.

Q. In what capacity?—A. Credit manager.

Q. And as such, do you have in your custody the records of that company with regard to transactions?—A. Yes, sir, I do.

Q. Did you at my request bring with you the records that may reflect any transactions with M. L. Holland for the year 1933?—A. Yes, sir.

Q. Will you state what your records show with reference to that?

Mr. Bruno: Just a moment. To which we object, if your honor pleases. It neither proves nor tends to prove any of the matters at issue here.

The Court: What are you trying for?

Mr. Chittim: Well if the court please, the whole issue in this case is whether or not this man had this amount of money on hand at the beginning of the period. Now anything which is grossly inconsistent with that, I think is of evidentiary value.

The Court: All right. Objection overruled. He may answer.—A. This is an original ledger sheet, dated in 1933, a purchase amounting to $137.20, made on July 8th. And

on December 30th—or in December of that year, the account was closed by a repossession, balance owing of $92.20.

200 Q. And in whose name was the account carried?—A. Ethel E. Holland and M. L. Holland.

Q. Do your records show what the payments were?—A. Ten dollars per month.

Q. And on what basis, or how?—A. There was a payment made August 9th, September 9th, October 7th. And repossession made in December.

Mr. Chittim: You may cross examine.

Cross Examination by Mr. Bruno.

Q. May I see your records please? Can you tell us what merchandise this represents?—A. We don't have those records that old on merchandise.

Q. Can you tell us from your records whether this was for merchandise sold the restaurant?—A. It was sold to the individuals. That's the way we carried it—the account.

Q. Can you tell us where it was delivered?—A. 1615 Welton Street. Apparently they had an apartment in the same building.

Q. Does it say apartment, or restaurant?—A. It has "apartment and restaurant."

Q. You're sure that didn't go into the restaurant at that address.—A. I am quite sure that it didn't.

201 Q. I see. But you repossessed it in 1933?—A. Yes, sir.

Q. In December of 1933?—A. Right.

Q. On December 22nd, 1933?—A. I don't have the repossession date. We closed it out at the end of the month.

JOHN Q. ADAMS, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

* * * * *

Q. And where do you live, Mr. Adams?—A. 1371 Milwaukee.

Q. And what is your profession, or occupation?—A. Banking business.

Q. And what is your position now—A. I am president of the bank at Golden—First National Bank.

Q. Do you know the defendant, Mr. M. L. Holland?—A. Yes, I do.

Q. During the year 1946, did you have any transactions with Mr. Holland, on behalf of or involving any third person?—A. '46 or '47. I'm not sure.

202 Q. What was that transaction?—A. Mr. Reddington, who was representing Mr. Brown Cannon at the Windsor Dairy, came out and asked me if I would help him effect a compromise between Mr. Holland and Mr. Cannon.

Q. And you agreed to do that?—A. Yes, I did.

Q. And what did you do in that connection?—A. Well, he told me what he had to offer, and I called up Mr. Holland and Mr. Holland came down, and I stated the proposition to Mr. Holland, and he said he'd have to see his attorney first about it.

Q. And what was this matter involved?—A. It was some old papers. Notes or accounts. I don't know whether it was a chattel mortgage, or deed of trust, that Mr. Cannon held against Mr. Holland.

Q. Do you know what the origin of them was?—A. No, I don't.

Q. Do you know how old they were?—A. No, I don't remember that.

Q. Do you know whether they were comparatively recent?—A. Oh, they were very old.

Q. And what was the basis upon which you settled this matter?—A. Well, I don't remember the exact amount. It was two thousand, or twenty-two hundred, or something like that; that Mr. Reddington said Mr. Cannon would accept in full payment of the entire obligation.

203 Q. The obligation was considerably in excess of that amount?—A. Yes, it was.

Mr. Chittim: You may examine.

Cross Examination by Mr. Bruno.

Q. Mr. Adams, do you remember whether this account was with respect to one of the restaurant corporations?—A. That's what I was told, yes, sir.

Q. For both parties?—A. Yes.

Q. And there was a question as to whether or not Mr. Holland owed it or whether the corporations owed it?—A. I don't recall that. I don't remember.

Q. In any event, when you put the proposition to Mr. Holland, he paid it?—A. That's right.

Q. Without quibble?—A. That's right.

GEORGE HEFT, a previous witness for the Government, was recalled to the stand, and having previously been sworn, testified as follows:

Direct Examination by Mr. Chittim.

204 Q. And what official capacity, if any, do you have?—A. I am head of the Returns Processing Branch, Office of the Director of Internal Revenue, Denver, Colorado.

Q. Now will you speak up so we can all hear you please? Have you at my request examined the records of your office to ascertain whether there were any income tax returns filed for either of the defendants, Ethel E. Holland and Marion L. Holland, for the years 1913 to 1933 inclusive?

Mr. Bruno: Now just a moment. To which we object if your honor pleases. The records are the best evidence of that.

The Court: I imagine that's true.

Mr. Chittim: Well that's true. I haven't gotten to that point yet.

Q. You may answer now.—A. Yes, I have.

Q. And did you discover any returns during that period? Just answer my question.—A. I am looking to see whether I did, or not.

Q. Oh, I see.—A. I found three returns filed during that period.

Q. Do you have those returns with you?—A. No, sir, I don't.

Q. Why do you not?—A. They have been destroyed.

Q. And what form did your records take with reference

to tax returns during that period?—A. We have
205 an index card, which is a three by five card, with the taxpayer's name and list reference upon the card, which refers to the books of the department.

The Court: Refers to what?—A. Refers to the accounts in the ledgers of the department.

The Court: Well now I don't understand that. You say the returns have long since been destroyed?—A. That's right, sir.

The Court: All right. Now, then, what kind of a record do you have in your office of those returns which have been destroyed?—A. Well, we have a three by five card.

The Court: What's on it?—A. The taxpayer's name, address, and list reference of the tax returns, of the original tax return.

The Court: All right. But does that show anything about amounts?—A. No, sir.

The Court: Do you have anything in your books and record accounts that shows anything about the amount of the income or the amount of the tax on any of those returns which were destroyed?—A. The amount of the tax, sir.

The Court: The amount of the tax—A. Yes, sir.

206 The Court: The amount of the tax paid?—A. Yes, sir. That's right.

The Court: Doesn't show anything else?—A. No, sir.

The Court: All right.

Q. What do your records show with reference to figures during that period, by either M. L. Holland or Ethel E. Holland?

Mr. Bruno: Now, if your honor pleases, again I renew my objections, that the records are the best evidence and not the testimony of any witness.

The Court: Yes, I think that's right, counsel. Now if he's got a record, let's have it produced and marked for identification. Offer it in evidence.

Mr. Chittim: I am going to excuse this witness and ask him to produce the original records.

The Court: Well, yes, if he has any original records they must be produced here.—A. What original record do you want produced?

Q. Well, how do they appear?

The Court: Well, he has said he has a three by five card. Do you have that card with you?—A. No, sir. That came from the microfilming we found.

Q. What you did was to tabulate a record?—A. That's right. We have a form called Form 899, which the Collector at that time certified, showing the various payments, and you have the original here somewhere.

207 Mr. Chittim: I am going to ask him to step down until we find the original, rather than take a chance on it.

Ben Garcia, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name and business address.—A. Ben Garcia, 805 E & C Building.

Q. What is your profession?—A. Examiner of questioned documents and handwriting expert.

Q. How much experience have you had in the field of examination of questioned documents?

The Court: You people want his experience gone into?

Mr. Bruno: Yes, your honor.

Q. What experience have you had in the field of questioned documents, and as a handwriting expert?—A. I have had over ten years of practical experience in the field of documents.

* * * * *

212 Mr. Bruno: I challenge this man's qualifications, if your honor pleases.

The Court: Well the challenge is overruled. I think he

is qualified in questioned document matters. A man who has had 250 questioned document cases has a field of experience, and a man who has testified in 80 some odd cases has a field of experience. As a matter of fact, Osborn's book on Problems of Proof is the classic.

Mr. Bruno: I ask your honor, does that kind of a person become an expert in handwriting, or a professional witness?

The Court: Well, I think, counsel, it is obvious from your question you'd like to establish that fact to the jury to consider. No, I'll overrule your challenge. You may testify.

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213 Whereupon a short recess was taken, and the trial was resumed. A conference was held out of the hearing of the jury.

The Court: You're going to offer them?

Mr. Chittim: I am going to offer them.

The Court: All right. And I'll overrule your objection to the materiality.

Mr. Bruno: We object to Government's Exhibits M, N, O and P for the reason that these are documents dated in 1929, and that they are immaterial in this case and do not throw any light on the issue as to the assets of the defendants on January 1st, 1946.

The Court: Well, the defense theory in this case is that the man had a hundred and four thousand dollars that he had accumulated before 1929, in large part at
214 least, and these documents, which I have read, go to the question of whether he had any such sum of money because in these documents he is stating that he is in bad financial condition, and he states also in one of them that the loss of the sixty thousand dollars investment is the loss of everything that he had in the world. So I think that's material. Objection will be overruled.

Mr. Zarlengo: May I make this objection, if your honor please. I want to point out to your honor that these are all written on the stationery of the Holland Pine Grove

Cafe at 1732 Welton, which has been testified was a corporation, and that they do not refer to the defendant's personal financial condition.

The Court: Oh yes, they do, particularly the one where he says the loss of his capital investment is the loss of everything he has in the world, so I think they are at least competent and materially relevant in this matter. I think the weight of them will go to the jury, and you folks can argue any of those circumstances you want.

Mr. Chittim: May the record also at this point show the stipulation as to the authenticity of the signature—that the signature of Arthur Francis Monroe, appearing on a signature card of the Wyoming National Bank of Casper, Wyoming, dated May 26th, 1937—

The Court: The authenticity of what?

Mr. Chittim: The signature of Arthur Francis Monroe is in reality the signature of M. L. Holland.

The Court: You so stipulate?

215 Mr. Bruno: Yes, your honor.

Whereupon the discussion at the Court's bench was ended.

The Court: Go ahead and make your offers.

Mr. Chittim: If the court please, I now offer in evidence the signature card of the Wyoming National Bank, Casper, Wyoming, marked for purposes of identification as Government's Exhibit L.

Mr. Bruno: Same objection.

The Court: All right. Objection will be overruled. The Exhibit will be received.

Mr. Chittim: I now offer in evidence a letter dated September 7th, 1929, which has been marked for purposes of identification as Government's Exhibit M.

Mr. Bruno: Same objection.

The Court: Objection will be overruled. The Exhibit will be received.

Mr. Chittim: I now offer into evidence Exhibits marked N, O and P for purposes of identification, which are letters bearing dates of April 26th, 1929, August 26th, 1929, and December 5th, 1928, respectively.

Mr. Bruno: Same objection.

The Court: Objection will be overruled. The exhibits will be received.

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216 HENRY P. THODE, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name please.—A. Henry P. Thode.

Q. What is your employment, or work, Mr. Thode?—A. I am a real estate broker.

Q. What was your employment back in 1929—between 1929 and 1933?—A. I was in charge of the real estate management of the Rockwell Investment Company.

Q. And as such, did you have any business transactions with the defendant, Mr. M. L. Holland?—A. The Holland Cafe Company occupied a property of which we were manager; the landlord being the Boerstler Investment Company. They acquired this property in August of 1929. We took over the management of it September 1st, 1929.

Q. Do you have your books for that period?—A. I have the ledger sheets for this piece of property for the years 1929, 1930, 1931, 1932, and 1933.

217 Q. Can you tell from those ledger sheets whether there was any rental from that earlier period due and owing as of January 1st, 1946?

Mr. Bruno: Now I object, if your honor pleases. The man testifies that this is a record of the Holland Cafe Company, a corporation, a distinct legal entity.

The Court: Objection is overruled. He may proceed.—A. The date was December 31st, 1946.

Q. Why that date?—A. There was an outstanding judgment of a principal of $506.66.

Q. Has that judgment been paid?—A. Since that time, yes.

Q. When was it paid?—A. In 1950, early in February.

Q. For what period was that judgment incurred?—A. I'd have to consult the record for that.

Q. Yes. Will you do that please?—A. The judgment covered rents subsequent to February 8th, 1930.

Q. For how long a period?—A. Something over two months. The monthly rental was $250.00.

Q. Now at the time this rental was delinquent, did you have any conversation with Mr. Holland in regard to his financial condition?—A. When we took over the
218 property early in September of '29, and that was before this judgment was taken, we received a letter from Mr. Holland dated September 4th. We replied to that letter on September 6th, a carbon copy of that letter being before me here.

Mr. Bruno: Now just a moment, if your honor pleases. He has answered the question.

The Court: Well he may conclude his answer. Go ahead. What was it?—A. I have a carbon copy of our reply to Mr. Holland's letter dated September 4th, ours is September 6th, 1929. He replied to that letter under date of September 7th, and I do not have a copy of that now.

Q. I now show you what has been admitted as Government's Exhibit M and ask you if you have seen that before?—A. I have.

Q. And where did you see it?—A. That letter was mailed to the Rockwell Investment Company, dated September 7th, 1929.

Q. By whom was it signed?—A. It was signed by M. L. Holland, over the name "The Holland Cafe Company."

Q. Did you have any oral conversations with Mr. Holland in regard to his financial condition at that time, or about that period?—A. I am afraid I can't answer that with certainty. It's too long ago.

219 Mr. Chittim: You may examine.

Cross Examination by Mr. Zarlengo.

Q. Mr. Thode, you say that during this period you were working for the Rockwell Investment Company?—A. Yes, sir.

Q. And were you in charge of their leases?—A. Their rental department.

Q. And part of your duties was to handle the leases that they had? Leasing properties?—A. Yes.

Q. Were you in charge of this lease with the Holland Cafe Company?—A. At that time, yes, sir.

Q. Do you have a copy of that lease?—A. I do not.

Q. That lease was with the Holland Cafe Company, was it not, a corporation?—A. Yes, it was.

Q. And not with Mr. Holland individually?—A. I believe it was guaranteed by Mr. Holland.

Q. You say you believe that. Now this is 20 years ago, and you don't have a copy of the lease?—A. I do not.

Q. So that you're not sure whether he guaranteed that lease or not, are you?—A. The judgment ran against the Holland Cafe and M. L. Holland.

220 Q. I didn't ask you that. Only about the lease.—A. I am sorry. I can't answer that.

Q. You can't answer. But it definitely was a corporation, was it not, Mr. Thode?—A. Yes, sir.

Re-Direct Examination by Mr. Chittim.

Q. Who was this judgment against that you referred to?

Mr. Zarlengo: To which I object, your honor

The Court: The judgment record is the best evidence.

Mr. Chittim: Well I think he asked him—

Mr. Zarlengo: I didn't ask him that.

The Court: He didn't ask him that question.—A. Will you repeat the question?

The Court: There isn't anything for you to answer.

Mr. Chittim: The court said you could not answer.

The Court: If he has the document?—A. I can get hold of it.

Q. Do you have the transcript of the judgment with you?—A. I do not have it in my possession. I can secure it.

The Court: Where is it?—A. It's in the office of Pershing, Bosworth, Dick & Dawson.

The Court: You can get it, you say?—A. Yes, sir.

221 The Court: Well, will you do so?—A. Immediately.

Mr. Chittim: As quickly as you can.

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GEORGE HEFT, a previous witness for the Government, was recalled to the stand, and having previously been sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. Mr. Heft, what records does the Bureau of Internal Revenue have with reference to income tax returns for the years 1913—in the period from 1913 to 1933— —A. Well we have a microfilm of three by five cards which were made from the original returns. That is, the three by five cards have on them the taxpayer's name, address, and the list reference of his account. The account which is on the books of our office.

Q. Those are on microfilm?—A. Yes, sir.

Q. All right. Proceed.—A. That's what we have.

Q. Do you have any other records? A ledger or anything?—A. We have ledger records, yes. Those are the books I referred to, with the list references.

Q. With the list references?—A. That's right.

222 Q. And what do they show?—A. Well, if the tax had been paid it would show the amount of tax, but since these returns in question are non-tax returns, there is no ledger account for them.

Mr. Bruno: Now if your honor pleases, I move that the last statement be stricken from the record. It was not responsive to any question.

The Court: Well, as far as the aspect that it was not responsive, he can adopt the answer if he wants to. That's his objection, not yours. Objection will be overruled.

Q. Now will you tell me what you have brought with you?—A. During the time I've been gone, I've had a certificate of assessments and payments prepared from my direction while I watched in the accounting division, and it's signed by George H. Allen, Director of Internal Revenue, to certify it as being correct.

Q. And that was based on what?—A. Based on the microfilm record of cards from 1913 through 1933.

Q. Now this was procured from the microfilm records in the office of the Director of Internal Revenue?—A. Correct.

Q. The official records?—A. That's right, sir.

Q. And your reply, as to the instrument marked for identification purposes as Government's Exhibit Q—

Mr. Bruno: Now just a moment. I think the question is leading. The attorney has been testifying himself, if your honor pleases.

223 The Court: No, I don't think so. It's just an attempt to get this identified. Objection is overruled.

Mr. Zarlengo: If your honor pleases, we would like to ask a few questions on this matter.

The Court: Yes, you may do so.

Voir Dire Examination by Mr. Zarlengo.

Q. Mr. Heft, with regard to Exhibit Q, they refer to "Continued on Page 2" Do you have a page 2 of this document?—A. Yes, I have. I have a continuation of this sheet certificate, and its for the years 1934 through 1940.

Q. Now as I understand your testimony, the Government has destroyed certain income tax returns, is that right?—A. That's correct, sir.

Q. And they destroyed these income tax returns for what period?—A. Well they've been destroyed now up through 1935.

Q. From 1935—A. Yes.

Q. So that at the present time, any income tax return filed prior to 1935 has been destroyed?—A. Excuse me. I mean '45, sir.

Q. '45?—A. I'm ten years off.

Q. Then any records filed prior to 1945 have been destroyed and you have no record of it?—A. I don't have the income tax return.

224 Q. Well then, as I understand your testimony, from 1913 to 1945, when these income tax records were destroyed a card was prepared, is that right? A small card?—A. A card is prepared on all of them, a three by five card.

Q. Who prepares those cards?—A. The listing room, as the returns are listed for assessment.

Q. The listing room in Denver?—A. Yes, sir.

Q. And the Denver Office handles it for what district?—A. For the state of Colorado.

Q. Who is in charge of that department?—A. Of what?

Q. The listing room that makes these cards?—A. Well, it's been changed. Mr. Hugh L. Morris was comptroller for awhile, and he's gone, and Mr. C. P. Higgins is in charge of the accounts now.

Q. Well the man that signed this document is George H. Allen.—A. Yes, sir.

Q. Now Mr. Allen was not in charge of the department that made the cards reflecting this information on the return, was he?—A. He is in charge now of the group.

Q. Was he in charge of it at the time the cards were made up?—A. No, sir.

Q. Do you know who was in charge of that department when the cards were made up?—A. Well I do from '34 on. That was Ralph Nichols. They had several Collectors previous to that time, but I wasn't there.

225 Q. Well from 1913 to 1934, Mr. Allen, who signed this, had nothing to do with the Department who made the cards listing the information on the tax returns?—A. That's right.

Q. And you had nothing to do with that department?—A. That's right.

Q. And you don't know who prepared those cards?—A. No, sir.

Q. Or the accuracy of those cards?—A. The accuracy can only be said that they are proof-read. That is in normal procedure, after the listing.

Q. But you personally know nothing about the accuracy?—A. No.

Q. You had nothing to do with proof-reading them?—A. No, sir.

Q. Or preparing the card?—A. No, sir.

Q. Now this white card, as I understand it, only contained the names of the taxpayers and the amount of tax?—A. No, sir. It doesn't.

Q. What does it contain?—A. Name and address of the taxpayer, and a reference to the ledger account.

226 Q. Is that all that's on that white card?—A. That's right.

Q. It refers you to a ledger account?—A. That's right.

Q. So that someone else has prepared a ledger account?—A. That's right, sir.

Q. Now did Allen have anything to do with preparing those ledger accounts?—A. No, sir.

Q. And you had nothing to do with it?—A. No, sir.

Q. You don't know how they were prepared, or how accurate they are?—A. I know how they were prepared, but I don't know how accurate they are.

Q. Now the ledger card contains what information?—A. It's not a ledger card. It's the book itself. It contains the number that is reflected on the card, the list reference, and the amount of tax paid on that date.

Q. And the name of the taxpayer?—A. That's correct.

Q. It doesn't show the gross income of the taxpayer? Or the number of dependents, or exceptions, or the amount of money that may be tax exempt, or anything of that kind?—A. No, sir.

Q. It just shows the amount of the tax?—A. That's right.

227 Q. So the taxpayer may have had an income of thirty thousand dollars. If it was all in tax exempt securities there would be no tax paid?—A. Well, that's not my province.

Q. Well, that's—

The Court: What was the answer of the witness?

Q. This card wouldn't reflect that, would it?—A. No.

Mr. Zarlengo: If the court please, we object to these exhibits.

The Court: They haven't been offered

Mr. Zarlengo: Oh. If they are offered, we'll object to it.

Mr. Chittim: If the court please, I offer in evidence, for admission into evidence, the instrument that is marked for purposes of identification as Government's Exhibit Q.

Mr. Zarlengo: If the court please, we object to that for the reason that under the undisputed testimony, Mr. Allen who has certified to these documents as true, complete and correct and so forth, under the testimony knows nothing about them, wasn't in charge of the department, had nothing to do with them.

Mr. Chittim: May I ask one additional question?

The Court: Yes.

Mr. Chittim: Mr. Heft, did you personally look at the cards on the microfilm from which this was prepared?—A. I looked at the microfilm, yes, sir.

228 Q. And you checked it against this record?—A. Well, I prepared—I had that last report prepared, which is identical with the original report.

Q. And you know that it accurately reflects the records of that office?—A. As far as our records are concerned.

Mr. Zarlengo: Who prepares this microfilm?—A. Well the microfilm is a picture of the card.

Mr. Zarlengo: Well who takes these pictures of the card?—A. Well we had a man from the Microfilm Company that came through—it's something new with us here. We just did it two years ago for the first time. I think it was two years ago. And this representative was there with people from our office and made the film.

Mr. Zarlengo: When were these microfilms prepared that represent the entries on Exhibit Q?—A. I believe it was two years ago.

Mr. Zarlengo: Well, then, as I understand your testimony, about two years ago some individual whose name you don't know, representing a company—do you know the name of the company?—A. No, I am afraid I don't.

Mr. Zarlengo: So that an individual you don't know,

representing a company you don't know, took some pictures of some cards, is that right —A. He among—I'd say there were at least eight of our own employees there with him.

229 Mr. Zarlengo: Were you there?—A. Part of the time I was there.

Mr. Zarlengo: Were you there when these were taken? —A. I wouldn't know, sir.

Mr. Zarlengo: Was Allen there when these were taken? —A. No, sir.

Mr. Zarlengo: So far as you know, then, neither you nor Allen were present when this unknown individual took these pictures on this microfilm?—A. That's right.

Mr. Zarlengo: If the court please, we object. There's no foundation laid for the introduction of these documents.

The Court: Well ask him about whether the records which were microfilmed agree with the index number referring to the ledger.

Mr. Chittim: Were these microfilm cards that you have referred to, as well as the entries in the books which you have referred to, showing payments, made and kept in the regular course of the business of the Bureau of Internal Revenue?—A. Yes, they are official records.

Mr. Zarlengo: I ask that that answer be stricken, if your honor please. It's not responsive.

The Court: Well that's not your objection. It's his. And if he wants it.

230 Mr. Chittim: I do. If it please the court, this man has testified that this is part of the official records. He has testified that he has examined them and that they are accurate. And under the circumstances, it's almost impossible to go any farther than that with public records of that type.

Mr. Zarlengo: If the court please, down to this point this whole thing rests upon some microfilms—that's what he checked—taken by an unknown person, employed by an unknown company. We don't know anything about the

accuracy of these because the man who did it is not here. We don't know his name even.

The Court: Well, that would go to the weight rather than the admissibility. They are public records, records of the Bureau of Internal Revenue, kept in the regular and ordinary course of business, and it seems to me they are admissible here. Now, then, the only difficulty I feel about this, Mr. Chittim, and I am not sure that that's of any too great consequence, is that you have not produced here the original ledger sheets, nor have you produced here the three by five card. Nor have you produced here the microfilm itself. What you have produced is a certificate of the Collector of Internal Revenue for the District of Colorado. Now is such a certificate admissible, is really the root of the objection you gentlemen are making.

Mr. Zarlengo: Under those circumstances, your honor—

The Court: Well, circumstances don't worry me too much. This isn't really the record. It's a certificate of what the records show. Now it seems to me there is a statute that covers this matter, isn't there?

231 Mr. Vigil: Yes, there is a rule, if the court please.

The Court: Well why don't you show me that? It seems to me there is a provision in the law for the reception of certificates, and if there is—

Mr. Zarlengo: Has your honor got in mind Rule 44 of the Rules of Civil Procedure?

The Court: No, I'm not thinking about that.

Mr. Zarlengo: Before they bring that rule up, I'd like to ask one question. Mr. Heft, these records are not public records, are they? These cards?—A. No, sir, they are not.

Mr. Zarlengo: So if I went there to look at them, they wouldn't let me look at them, would they?—A. Probably not, sir.

The Court: Well on the other hand, they are of course the records of the Bureau of Internal Revenue, and agency of the United States Government.

Mr. Zarlengo: Well the reason I wanted to bring that

out, your honor, any statute or rule pertaining to public records would not be applicable here.—A. These are public records in the sense that they are records of the U. S. Government, the treasury department—Bureau of Internal Revenue.

232 Mr. Bruno: The very danger, your honor, of the whole thing. In a situation such as this is, there is no chance to check.

The Court: Oh, yes, there's a chance to check. You gentlemen want a chance to check this? I'll give you an order.

Mr. Zarlengo: I think it's up to them to bring in the microfilm. We don't have to bring in the Government's evidence.

The Court: That is correct. We are talking right now about the admissibility of this certificate, and if it's an opportunity to check that you people want, I'll give you an order.

Mr. Vigil: If the court please, Rule 27—

The Court: Let me see it. Well, where is the rule in civil cases? I'd like to see that. This is Rule 27 of the Federal Rules of Criminal Procedure?

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The Court: All right, Mr. Chittim. Go ahead.

Mr. Chittim: If the court please, I now offer in evidence the instrument marked for purposes of identification as Government's Exhibit Q, as the certificate has been amended by the Director of Internal Revenue.

233 The Court: Any objection?

Mr. Zarlengo: Yes, there is, your honor. We are objecting to Government's Exhibit Q for the reason that it refers to income tax returns prior to the period in question; namely, prior to 1946, which is inadmissible, has no probative value, and is incompetent in this case and for the further reason that this is not the best evidence. The testimony here has been that there were certain cards prepared containing some information taken from these income tax returns that were destroyed; that there were some microfilms prepared and ledger sheets. None of these documents

are here in court, and those, in the absence of the income tax returns, would constitute the next best evidence and not this certificate.

And we make further objection that according to the testimony here, these cards from which the microfilms and these other documents were prepared, do not contain all of the information contained on the income tax return. The income tax return would show the total income; would show a number of matters that do not appear on these cards. And I notice the certificate has been changed, but we want to make the further objection that it's not even now properly authenticated.

The Court: Let me see it. The objection will be overruled and the exhibit will be received in evidence.

234 Mr. Zarlengo: Are you offering Government's Exhibit R?

Mr. Chittim: I am going to offer it as soon as you have had a chance to look at it. I now offer into evidence the document marked for identification as Exhibit R, which is the second page referred to—

Mr. Zarlengo: We object for the same reasons as stated before, your honor.

The Court: The objection will be overruled. The exhibit will be received in evidence.

Mr. Chittim: That is an amended certificate in conformity, in both instances. I am through with the witness.

Cross Examination by Mr. Zarlengo.

Q. Mr. Heft, how long have you been in the Internal Revenue Department?—A. Sixteen years, sir.

Q. And you have been in what departments?—A. I've been in the Field Division, Social Security Division, Wage and Excess Tax Division, and the Withholding Tax Subdivision. And now in the Returns Processing.

Q. You have had considerable experience in income tax matters?—A. Primarily in other fields, sir.

Q. Do you know what the exemptions were in the year 1913, Mr. Heft?—A. I believe I am not qualified to speak on that subject.

235 Q. They were much larger at that time than they are now?—A. Oh, yes.

Q. So you're not qualified to testify as to what the exemptions were in 1913, or '14, or any of the years shown on Q or R, is that correct?—A. That's right.

Q. Yesterday when you were on the stand, I asked you to check the records to determine whether or not Mr. Holland didn't make additional payment on the 1946 tax.—A. You asked me to look for an amended return.

Q. Well that was one of the things, and I also asked about additional tax that was paid.—A. Well, I searched our records and found on January 22nd, 1951, we received a payment of $2,363.17. This money was deposited in a suspense account on January 24th, 1951. It remained there until January of this year, when it was placed in an additional suspense account pending receipt of a document to which it could be applied.

Q. Well this was paid as additional 1946 tax, wasn't it?—A. That's what the records show.

Q. I show you Defendants' Exhibit 14, and will you state what that is?—A. This is a personal check issued by M. L. Holland, in the amount of $2,363.17, which is in payment of income tax.

Q. For the year 1946?—A. For the year 1946.

236 Q. And that was cashed by the Government, was it?—A. The check is dated January 22nd, 1951, deposited January 24th, 1951.

Q. And that was for additional tax for the year 1946?—A. That's the way it—yes, sir.

Mr. Zarlengo: I offer Defendants' 14 in evidence.

The Court: Any objection?

Mr. Chittim: The only objection we have is that it's immaterial as far as this trial is concerned. It's in 1951. It doesn't tend to prove or disapprove any issue in this case.

The Court: Objection is overruled. It will be received.

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238 HARRY B. GREEN, a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

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Q. What is your employment, Mr. Green?—A. I am treasurer of Fox Theaters.

Q. And as such do you have custody of the employment records?—A. I do.

Q. Have you at my request brought your employment records of that company with reference to Ethel E. Holland?—A. I have.

Q. Will you turn to those records and tell us what they show with reference to when she was employed? For what length of period?—A. They indicate that she was employed from 9/1/29 to July 3rd, 1943.

Q. Do those records indicate the compensation which she received?—A. Only for the years from 1937 through 1943, as long as she worked in that year.

Q. Can you tell us what the rate of compensation was for that year?—A. I can't tell you the rate. I can tell you the amount.

Q. All right.—A. $1,987.50 in 1937, $2,090.00 even in 1938, $2,090.00 in 1939, $2,090.00 in 1940, $2,105.00 in
239 1941, $2,076.00 in 1942, and $1,224.00 in 1943 to July 3rd.

Mr. Chittim: You may examine.

Cross Examination by Mr. Bruno.

Q. Mr. Green, just one question. She averaged slightly in excess of two thousand dollars a year, isn't that right?—A. Yes, sir.

Boyd R. Sims, a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

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Q. Where do you live, Mr. Sims?—A. Casper, Wyoming.

Q. What is your occupation or employment at the present time?—A. Insurance and real estate.

Q. Do you know the defendant, Mrs. M. L. Holland?—A. Yes.

Q. How long have you known him?—A. About fifteen years.

Q. And where and under what circumstances did you meet him?—A. I met him when I was employed by the Wyoming National Bank at Casper.

Q. When you met him, in what capacity were you
240 employed?—A. Cashier.

Q. And under what circumstances did you meet Mr. Holland?—A. He came there and opened an account.

Q. What type of an account?—A. I believe it was a checking and savings account.

Q. Did you have any dealings with him?—A. Yes.

Q. What were those dealings? Just tell us.—A. Oh, we loaned him money from time to time on market stocks.

Q. Were those loans large, or small, or frequent?—A. No, they were in the neighborhood of a thousand dollars. It's probably as much as there were.

Q. Were there numerous loans?—A. Not too many. Several probably.

Q. Do you know of your own knowledge the purpose of those loans?—A. No. For the purchase of stock.

Q. Do you know what stock was purchased?—A. No. Not offhand.

Q. Do you know the character of them, or anything about them?—A. Well, there were stock units of small value. In other words, the cost of them was not very great.

Q. Now in connection with those loans, did Mr. Holland at any time make any statement to you in regard to his financial condition at that time?—A. Well, I don't believe he did at that time. When he first came.

Q. Did he in connection with the loans make any
241 statement to you with regard to his financial condition?—A. Not when he first came.

The Court: Well did he at any time?—A. Yes.

The Court: Well tell us about it.—A. He said that he didn't have very much money, he had lost money in the restaurant business in Denver.

Q. Did he say anything more to you?—A. Not that I remember.

Q. May I show you this, and ask you if this is your signature, Mr. Green?—A. Yes.

Q. Will you read that and see if it refreshes your memory in any way?—A. Yes, substantially.

Q. Now will you just tell us, does that refresh your memory?—A. Yes.

Q. Now will you tell us just what Mr. Holland stated to you with reference to his financial condition?

Mr. Bruno: Now he has answered that, if your Honor pleases.

The Court: Well, isn't that right, Mr. Chittim? Have you got something in addition, in the document?

Q. Does that refresh your memory with reference
242 to anything in addition to what you told us a few minutes ago?—A. No, that's substantially what there was.

The Court: I don't understand what you mean by "that." What appears in this document, or what you heretofore testified to?

Mr. Chittim: Sir—

The Court: Which is it? I don't know what he is talking about. It's ambiguous, his last statement. Do you want me to clear it up for you?

Mr. Chittim: Yes I do, your Honor.

The Court: Well, go ahead—

Q. I want you to read that and tell me whether that is correct or not. And if it is, will you state that to the court and jury?

Mr. Bruno: Now wait a minute, if your Honor pleases—

The Court: Now, Mr. Chittim, that isn't the way to proceed. Show him the document. Ask him if it refreshes his recollection.

Q. Does that refresh your recollection?—A. Yes.

The Court: All right. Now ask him the question so that counsel can interpose an objection to it if it isn't a proper one.

Q. Now can you tell me anything more than what you

stated a few minutes ago with reference to statements made to you by Mr. Holland with reference to his financial condition?—A. I learned from Mr. Holland that he had very little money at that time, and he had gone broke in
243 the restaurant business in Denver, and had some debts remaining from that business. He stated on several occasions he would like to make some business ventures, but he did not have the money to do so.

Q. Does your statement now accurately reflect what Mr. Holland told you at that time?—A. Yes.

Mr. Chittim: You may examine.

Cross Examination by Mr. Bruno.

Q. Mr. Boyd, you were cashier of the Wyoming National Bank? Right?—A. That's right.

Q. And when did you become cashier of the Wyoming National Bank?—A. 1934.

Q. In 1934. And how long did you remain as cashier of the Wyoming National Bank?—A. 1946.

Q. Now when did you first meet Mr. Holland?—A. I believe it was in the year 1937, or 1938.

Q. And at that time he opened a checking account?—A. Yes.

Q. A savings account?—A. Yes.

Q. And also rented a safety deposit vault?—A. Yes.

Q. Now we want the jury to know everything here,
244 Mr. Sims. Tell the jury in what name he opened these three accounts.—A. Francis Monroe.

Q. Now did he at that time also tell you to buy some stock for him?—A. Yes.

Q. So he did. Now how long was it after he opened these accounts in the name of Francis Monroe, did he come to the bank and tell you he was Lou Holland?—A. Well I don't remember the exact time. But it was sometime after he opened the account.

Q. Didn't you tell me this morning, Mr. Sims, that it was within the week?—A. No, I didn't tell you that it was within a week.

Q. You didn't tell me that out in the hall?—A. No.

Q. Well now, let's see. Just when did he come in and tell you that his name was Lou Holland and not Francis Monroe?—A. Well I can't remember exactly when it was.

Q. Well your best impression.—A. Within a short time from the time I first met him.

Q. Well now, what would you say was a short time? A week? Two weeks? A month? Or a year?—A. Oh, a month or two would be a short time.

Q. Did he tell you then why he opened this account in the name of Francis Monroe—A. Yes.

Q. And did he consult with you about it?—A. He
245 talked to me about it.

Q. Did he ask you whether or not it was against the law to take an account in a name other than his own? —A. No.

Q. Didn't you tell him that it was not?—A. No.

Q. Now, Mr. Sims, at the time he opened this account, you said that he ordered some stock through the bank?—A. Yes.

Q. And you bought that stock, didn't you?—A. Yes.

Q. For him?—A. Yes.

Q. And you bought it in the name of Francis Monroe? —A. Yes.

Q. He had given you his address at the hotel, hadn't he?—A. Yes.

Q. And shortly after you bought it you called him on the telephone, didn't you?—A. Well I don't remember.

Q. Didn't you call at the hotel for a Francis Monroe?—A. I don't remember whether I did or not.

Q. And it was at that time he told you that his name was Marion Luther Holland, of Denver.—A. I don't remember that.

Q. Did you tell the government investigators this,
246 Mr. Sims: "He appeared to live frugally and explained to me that he was smoking a pipe to save the expense of cigars."—A. Yes.

Q. Now did I understand you to say that Mr. Holland loaned you money, on direct examination?—A. No.

Q. Didn't you so testify?—A. No.

Q. Did you loan him money?—A. Personally?

Q. Yes.—A. No.

Q. Did the bank loan him money?—A. Yes.

Q. How many times?—A. Several.

Q. Well, what do you mean by "several"?—A. Oh, two, or three, or four times, I would say.

Q. And did he buy stock on margin?—A. Yes.

Q. And he would put up a certain amount, and then the bank would loan him some more?—A. That's right.

Q. And put up the security with you?—A. Yes.

247 Q. Didn't he tell you at that time, Mr. Sims, that his corporations had gotten into financial difficulties, and that he was putting the money in the safety deposit box so it couldn't be attached?—A. He told me that his restaurant company had lost money and that he owed debts, and the reason he put the safety deposit box and the account in the name of Francis Monroe was because that he thought that his creditors might attach his account.

Q. Did he tell you that he had put money in the safety deposit box?—A. No, I don't think I asked him that.

Q. You don't think you asked him that. Did you tell the government attorneys in this statement that Mr. Holland was a man of good character?—A. Yes.

Q. Did you tell the investigators this? "His purchases were usually stock selling for only a few dollars per share, and the total purchase would not be more than a few hundred dollars."—A. Yes.

Q. Didn't you just tell us here a little while ago that the loans were sometimes a thousand dollars?—A. Well you were talking about the purchase of stock.

Q. That's what I am talking about.—A. The stocks were usually of small denomination, and then several purchases were accumulated into a note, and the notes

248 were generally in the amount of about a thousand dollars, with these small purchases of stock attached.

Q. Didn't Mr. Chittim ask you this question: "Did you loan him any money?" You answered that "Yes"?—A. Yes.

Q. And didn't he ask you how much you loaned him, and you said a thousand dollars?—A. In the neighborhood of a thousand.

Q. Yes.—A. That's right.

Q. How long ago is it since you made this statement to the Government, Mr. Sims?—A. Probably three years, or in the neighborhood.

Q. In 1949?—A. Possibly.

Q. And you could remember these conversations as well in 1949 as you remember them now?—A. I believe so.

Q. How old are you, Mr. Sims?—A. Sixty-two.

Q. You testified that he said to you several times that he'd like to make some business ventures?—A. I believe so.

Q. Did he ask you to loan him any money to make these business ventures?—A. No. The only loans were on stock transactions.

Q. Did he tell you what those business ventures
249 were that he wanted to make?—A. I can't remember right now what they were.

Q. You don't remember that you told me this morning that it was within the week that he told you his name was Marion Luther Holland and not Francis Monroe?

The Court: Well you have pursued that two or three times already.

Mr. Bruno: If your Honor please, I have a right to test his memory.

The Court: You have tested it on that subject as far as I am permitting you to do so.

Mr. Bruno: All right. May the record show our exceptions.

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ROBERT E. BRYANS, a witness for the government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name please.—A. Robert E. Bryans.

Q. Where do you live, Mr. Bryans?—A. Casper, Wyoming.

Q. What is your occupation, or work?—A. Banking.

Q. And with what bank are you connected?—A.
250 Vice president, cashier, at the Casper National Bank.

Q. As such, do you have the control and custody of the records showing the accounts there?—A. That is true.

Q. Did you at my request bring with you any records which you may have relating to any loans to M. L. Holland during the years 1937 to 1939?—A. That's right.

Q. Will you turn to your records and indicate what loans there were during that period?

Mr. Bruno: We didn't get the years.

Mr. Chittim: 1937 to 1939.

A. There were eight loans, ranging from two hundred dollars to twenty-one hundred and ninety-four dollars and thirty-eight cents. From September, 1937, to April 15th, 1939.

Q. Do you have any records of any loans earlier than that, or subsequent to that period?—A. No, sir.

Mr. Chittim: You may examine.

Cross Examination by Mr. Bruno.

Mr. Bruno: May I see that record, please?

Q. Mr. Bryans, those loans were made for the purchase of stocks, were they?—A. I do not know whether they were made for the purchase of stock. They were secured by stock.

Q. I see. And will you tell us what stocks secured
251 the loans?—A. Fifty shares of Twentieth Century Fox, a hundred shares of Warner—Fox film—one hundred shares of Warner Pictures, one hundred shares North Central Railway Company.

Q. North Central?—A. Yes. One hundred shares of Western Union, fifty shares of the Holly Sugar Company, three hundred shares Nash-Kelvinator.

Q. Mr. Holland owned that stock in 1939; did he?—A. First part of 1939, yes.

Mr. Bruno: That's all.

Mr. Chittim: Just one more question, please. Can you determine from your records when that stock was purchased?—A. No, sir.

Mr. Chittim: That's all.

Whereupon the witness was excused from the stand.

Mr. Bruno: Just one question more of this witness, if your Honor pleases.

The Court: All right. Take the stand.

Whereupon the last witness, Mr. Bryans, was recalled.

Mr. Bruno: This stock was in your possession from the time you made the first loan in September 15th, 1937, to April of 1939?—A. A portion of it, yes.

Mr. Bruno: That's all.

Mr. Chittim: Just one moment. What portion of that stock was placed to you at any time?—A. Twentieth Century Fox film was placed in collateral September
252 15th, 1937. The hundred shares of Warner pictures was placed in, placed for, collateral, I should say, March 7th, 1938.

Mr. Chittim: Does your record indicate when it was released?—A. Yes. The stock was all released on April 15th, 1939.

Mr. Chittim: Now go ahead and tell us about the other collateral that was put up.—A. One hundred shares of North Central Railway was placed in collateral September 27th, 1938. A hundred shares of Western Union, October 15th, 1938. Fifty shares of Holly Sugar Company was placed in collateral December 30th, 1938. Three hundred shares of Nash-Kelvinator was placed in collateral on December 30th, 1938.

Mr. Chittim: Do you know whether these were put up as collateral as they were purchased, or not—A. No, I do not.

* * * * * *

Mr. Chittim: If the court please, I offer in evidence Government's Exhibits T, U, and V, which are certified certificates of assessments and payments, of
253 the Director of Internal Revenue for the District of Colorado. The first of those is in relation to Holland Cafe. That's Exhibit T. The second of those is with reference to Pine Grove Cafe. That's marked as Exhibit U, and the third one which is marked for purposes of identification as Government's Exhibit V relates to the Rocky Mountain Restaurant Company.

The Court: Any objection?

Mr. Bruno: Yes, there are, your Honor. We object to all three of these exhibits for the reason that none of these pertain to either one of these defendants. We'll take Government's Exhibit T which purports to be a certificate signed by Allen concerning income tax returns to the Holland Cafe. And in the first place, there is no showing here as to whether the Holland Cafe is a corporation or what it is, or what the connection of the defendants is with that company. And if it is a corporation, why the returns of that company will be absolutely immaterial in this case. And the same thing applies, your Honor, with regard to Exhibit U, the Pine Grove Cafe, and to Exhibit V, the Rocky Mountain Restaurant Company. There is no connection at this time whatsoever.

The Court: What do you claim, Mr. Chittim?

Mr. Chittim: If the court please, there is already in evidence, through the admission of the defendants,
254 that these were three corporations which he owned all except, and controlled, except for director's qualifying shares, and managed them and operated them as his own independent business. And it is on the basis of that, as well as the question of income during this period, that I am offering them.

The Court: I suppose, Mr. Zarlengo, that where the individual taxpayer is charged with not reporting his income that the presentation of the evidence would not be complete unless we had the returns of any business association or corporations through which he did business, because otherwise we don't know whether he reported his income that way or not. So your objection will be overruled.

Mr. Zarlengo: If the court please, I just want to make one further objection here. With regard to these companies, they go way back in number of years. Now I tried to find out from one of the Government's witnesses yesterday what the taxes were for those years, and he stated he did not know. Now these have no probative value because these income tax returns have been destroyed. These cards don't show what the income of these companies were, and furthermore, these are corporations, separate entities from the

defendants, and even though I may be a stockholder in some corporation, nevertheless the income of that company doesn't become my income. And we raise that further objection, and further, that there has been no proper
255 evidence connecting either one of these defendants with those exhibits.

The Court: Well I see another reason why they are material and competent, and that is that it is the defense in this case that he had in earlier years accumulated a large sum of money in the form of cash, and it is material and relevant to determine whether any businesses which he owned were making the kind of money that would enable him to accumulate that sum. So therefore from that point of view too, and so far as your exemptions in the earlier years are concerned, as a matter of fact you don't need any evidence on what those exemptions were. All you have to do is to go back and read the Revenue Acts from 1913 forward and tell us about it here. Argue it to the jury if you want to. That's part of the laws of the United States, of which we have notice. Objection will be overruled. The exhibits will be received.

Mr. Chittim: I now offer in evidence an instrument which has been marked Government's Exhibit W for purposes of identification, which purports to be a certificate of assessments and payments covering the period 1933 to 1937, certified by the Director of Internal Revenue, for the District of Wyoming, for M. L. Holland. I also offer an instrument marked Exhibit X, which purports to be a certificate of assessments and payments, certified by the Director of Internal Revenue for the District of Wyoming, for the account of M. L. and Ethel Holland, Hotel Townsend, Casper, Wyoming, for the period '38 and '39. And a third instrument which is marked for purposes of
256 identification as Government's Exhibit Y, for the period 1940 to '41, with relation to the account of Marion L. and Ethel Holland, Townsend Hotel, Casper, Wyoming, certified by the Director of Internal Revenue for the District of Wyoming.

Mr. Bruno: If your Honor pleases, we object to the introduction of each one of these exhibits. Who is the Director of Internal Revenue from Wyoming who certifies that the man who signs this is the Collector of Internal Revenue for the District of Wyoming. If your Honor pleases, there is no evidence shown here that the tax returns and the requirements of Wyoming are the same as the Government of the United States. They present us with a document that gives us no authority or no opportunity at all to cross examine any of the witnesses or examine any of the records which these various exhibits purport to state their certifications of. They are in my opinion, if your Honor pleases, and I object for that reason, if your Honor pleases, not in any wise relevant in this case. They are not properly authenticated and they do not give the defendant an opportunity for cross examination. Merely because the United States Attorney says that this is the man who is the Director of Internal Revenue, and that he says several things? If your Honor will examine these documents, you will find that over the printed matter and after the printed matter you have a typewritten statement. Who put them there?

The Court: Well these are certificates of records of the U. S. Bureau of Internal Revenue. It isn't the
257 State of Wyoming.

Mr. Bruno: That's what he claimed they were.

The Court: No, it says: "I have legal custody of the official records of the U. S. Bureau of Internal Revenue for the State of Wyoming."

Mr. Bruno: I think my objection is still good, your Honor. Who put that in above the printed part of that? It's the very thing that your Honor suggested yesterday, on these certificates —

The Court: Objection will be overruled. The exhibits will be received.

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FRANK G. CLARK, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Voir Dire Examination by Mr. Bruno.

Mr. Bruno: May I have the exhibits, your Honor?

Q. Would you give us your name, please?—A.
258 Frank G. Clark.

Q. And where do you live, Mr. Clark?—A. Cheyenne, Wyoming.

Q. What is your official position in Wyoming?—A. At the present time U. S. Director of Internal Revenue.

Q. And how long have you been occupying that position?—A. Since November 24th, 1952.

Q. Since November of 1952?—A. Yes, sir.

Q. And as such director, do you have the legal custody of the official records of that office?—A. I do.

Q. Mr. Clark, when did you examine the records of your office for certification of these exhibits, as you have stated thereon?—A. I did not personally examine them myself.

Mr. Bruno: I renew my objection, if your Honor pleases. It's contrary to his certification.

The Court: Well, will you tell us what you did?—A. Sir?

The Court: Will you tell us what you did?—A. Well, I had the records checked by another individual.

The Court: Well who was that individual?—A. Miss Lebhart, cashier of my office.

259 The Court: In your office?—A. Yes, sir.

The Court: Do you desire to examine the witness any further?

Mr. Bruno: No, your Honor, I don't.

The Court: Objection overruled. The exhibits will be received. You may step down.

Mr. Bruno: Just one more question, if your Honor will permit it.

The Court: All right.

Mr. Bruno: Mr. Clark— —A. Yes, sir?

Mr. Bruno: You don't know whether this certification—personally, you don't know whether it's correct or not?—A. Not personally, no, sir.

Mr. Bruno: And you directed this to the attention of Mr. George C. Bodley as Special Agent here in Colorado, did you not?—A. Yes, sir.

Mr. Bruno: I show you the exhibits and ask you if Government's Exhibit W is the original of your certification.—A. Yes, sir.

Mr. Bruno: Doesn't it say "copy" at the top?—A. Well, it says "copy" but we have to make several copies of the same certification—make numerous copies of it.

Q. I show you Government's Exhibit Y and ask you if that doesn't show it is a copy?—A. The same conditions here exists, where we made several copies of those.

260 Q. And I show you what has been marked as Government's Exhibit X and ask you if that doesn't say it's a copy?—A. Yes, sir.

Q. Now, Mr. Clark, when did you put in these words: "I have legal custody of the official records of the U. S. Bureau of Internal Revenue for the State of Wyoming" and then follows a printed part, and then "that after diligent search no record or entry appears herein except as indicated herein."?—A. That was put in prior to signing, sir.

Q. Did you put it in the original?

The Court: Well, as I understand it, these are all duplicate originals. Each one is executed as an original, is that so? These are all duplicate originals?—A. Yes, sir.

Q. Did you put it on the other copies, or other originals? —A. My recollection isn't clear as to that, sir.

Q. Well you did it this morning.

The Court: It doesn't make any difference. If it's on this original, that's all we need.

Mr. Bruno: I respectfully submit, your Honor, this is marked a copy. I didn't put it there.

The Court: Well that's explained now.

Mr. Bruno: Well it's his opinion, your Honor.

261 The Court: Well it's his certificate.

Q. Now Mr. Clark, who is this woman in your office that made the search?—A. Miss Lebhart, cashier.

Q. And do you know what search she made?—A. A complete search of all the records we have.

Q. How do you know it was a complete search?—A. Because, knowing our system, we make a complete search.

Q. But you have no personal knowledge of whether she made a complete search or not?—A. No, sir, but I accept her words because she's been an employee for 25 years with the Bureau of Internal Revenue.

Q. And because she's been employed at the Bureau of Internal Revenue for 25 years you want this jury to believe now that she has never made a mistake?—A. Well there's very few instances that she has.

The Court: That doesn't have anything to do anyhow with the question of these documents.

Q. But you don't know of your own personal knowledge? —A. No, sir.

Q. And you don't know what search she made?—A. I know the search she made—a complete search of the records.

Q. How do you know that?—A. Well, because I instructed her to do that.

Q. And do all your employees do what you instruct them to do?—A. Well, they'd better.

Q. Do they? That's the question I asked you.—A.
262 Ordinarily, yes.

Q. But not always?—A. No, I suppose there are sometimes they don't.

Mr. Bruno: That's all.

The Court: Objection is overruled. The exhibits will be received.

H. HOROWITZ, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name please.—A. H. Horowitz.

Q. And where do you live, Mr. Horowitz?—A. 7333 Garfield.

Q. What is your occupation, or work?—A. Chief Deputy Clerk of the District Court, City and County of Denver, Second Judicial District.

Q. And as such, do you have under your custody the official records of judgments entered in that court?—A. Yes, sir.

Q. Have you at my request brought with you the records with reference to a certain judgment by the Aussen Investment Company against Marion L. Holland and the Holland Cafe Company?—A. Yes, sir.

Q. Will you turn to those records and tell us what
263 they show?—A. First entry, No. 108342, Holland Cafe Company, a corporation, versus—excuse me. Aussen Investment Company, a corporation, versus the Holland Cafe Company, a corporation. Corrected. See below. 108342. That's the number of the case. Aussen Investment Company versus Marion Luther Holland and the Holland Cafe Company, a corporation. There is a judgment rendered for $506.66 and costs under date of June 2nd, 1930. And we have here, August 14th, 1930—Execution, Denver County, returned, failed to pay. Under date of February 9th, 1950, this judgement satisfied in full this date by satisfaction of judgement. J. B. Goodman, Jr., Clerk. C. B. Parsons, Deputy Clerk.

Mr. Chittim: You may examine.

Mr. Bruno: Just one question, Mr. Horowitz.

Cross Examination by Mr. Bruno.

Q. Do you know who paid that judgement?—A. It doesn't show, because it comes in as a satisfaction of judgement.

Q. Who signed the satisfaction, Mr. Horowitz?—A. Well, the plaintiff.

Q. In this case?—A. But it shows here, Aussen Invest-

ment Company, by—Oh, by Marion Luther Holland and the Holland Cafe Company, a corporation. Marion Luther Holland and the Holland Corporation.

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ELMER C. PENNEY, was called as a witness for the
264 Government, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—A. Elmer C. Penney.

Q. Where do you live, Mr. Penney?—A. Casper, Wyoming.

Q. And what is your work, or profession?—A. I am vice-president of the Wyoming National Bank, Casper, Wyoming.

Q. Do you have custody of the records of that bank?—A. I do.

Q. Have you at my request brought with you the records of your bank pertaining to the loan account of Francis L. Monroe, for the years 1937 and 1938?—A. I have.

Q. Now will you tell us what that record shows?

Mr. Bruno: Now just a moment, if your Honor pleases. I object until further foundation is laid that this gentleman knows that the records are true and correct, by whom they were compiled and when they were compiled.

The Court: Yes. Inquire about that.

Q. Are the records which you have brought with you the regular and official records of the bank?—A. They are.

Q. Are those records kept in the regular course of
265 business of the bank?—A. They are.

Q. Are they kept by employees of the bank under your direction and supervision?—A. They are.

Mr. Bruno: We haven't heard when, and as to whether this man was in charge at that time or not.

Mr. Chittim: If the court please, I don't think that makes any difference on a matter of this kind.

The Court: Well I don't see why you don't ask about

it and clear it all up. I don't try a lawsuit on the theory of doing just as little as possible to qualify the evidence. Let's satisfy it right up to the hilt. When did you go to work for that bank?—A. In about November 3rd or 4th, 1935.

The Court: And have you had custody of these records? —A. Mainly, during all of that time.

The Court: And have they been kept in the ordinary and regular course of business under your direction and supervision?—A. They have.

The Court: Since that date?—A. Yes.

266 The Court: All right.

Mr. Bruno: We have no objection.

Q. Now will you tell us what your records show with reference to loans to Francis M. Monroe during that period?—A. We have a liability ledger sheet here. It's entitled "Francis M. Monroe." It shows on July 18, 1938, he borrowed from the Wyoming National Bank fourteen hundred and fifty dollars, which was secured by two hundred Paramount Pictures and one hundred New York Central stock. Abbrevation.

Mr. Bruno: How about the Paramount Pictures?—A. Two hundred.

The Court: It was secured by both?—A. Yes, sir.

The Court: What was the date of that loan?—A. July 18, 1938.

Q. Now do your records show what interest was paid on that loan?—A. No, it does not.

Q. Does it show what interest it carried?

The Court: Well what difference?

Q. Do your records show when that loan was paid off? —A. Well on July 29th, '48, $1,042.68 was applied to the note. In August, $407.32 was applied. The balance.

Q. Now was there any other loan appearing— —A. There was another loan on September 6th, 1938. Secured by one hundred New York Central, one hundred "S.P." which

I presume is Southern Pacific. The amount of $1,070.92.

267 Q. And when was that loan paid off?—A. That loan was paid on September 15th, 1938.

Q. I show you what has been marked for purposes of identification as Government's Exhibit L and ask you if you have ever seen that before?—A. I have.

Q. Which has been admitted as Government's Exhibit L. Will you tell us what that is?—A. That's a card or record of a safety deposit box, November 18th, which bears the date of May 26th, 1937. Shows the name of Francis M. Monroe, residence, Townsend Hotel, Casper, Wyoming. Gives his description, birth place.

Q. What is that?—A. Well I believe it says B-a-r-t-m, Arkansas.

Q. Do you of your own knowledge know who Francis M. Monroe was?—A. Well I was acquainted with him in those days as Francis M. Monroe.

Q. Do you know whether he is in the courtroom at this time?—A. I think he is.

Q. Will you point him out, please?—A. This gentleman at the table, over there.

Mr. Chittim: You may enquire.

Cross Examination by Mr. Bruno.

Q. Mr. Penney, as I understand it, you're the cashier of the bank now?—A. Well, I'm vice-president.

Q. Vice-president. Did you know Mr. Sims, who

268 was cashier at that time?—A. I certainly did.

Q. At that time what was your position, Mr. Penney?—A. I was assistant cashier.

Q. Assistant cashier under Mr. Sims?—A. Yes.

Q. Mr. Penney, do your records show, or do you know of your own personal knowledge, whether or not there was a safety deposit box taken in the name of Francis Monroe, at the bank?—A. I don't believe I do have personal knowledge. All I know is from records.

Q. Well do your records show it?—A. The records show it.

Q. And when was that safety deposit box taken, or rented?—A. I believe the date on the card stated May 26th, '37.

Q. And does the card show how long it was rented? This

exhibit. I show you Government's Exhibit L and ask you to examine it now. Tell me how long the safety deposit box, that particular one, was rented to Mr. Monroe. —A. Well, on the back side of the card there is a release signed by Mr. Monroe, dated May 1, 1939, in which he acknowledged receipt of all of the contents in his vault which were given to him at that time.

Q. What was it? A year, or two?—A. Well it's
269 practically two years. May 26th, '37, to May 1st, '39.

Q. Thank you very much. Do you know whether there was a savings account opened at the bank?—A. There was.

Q. And was there also a checking account?—A. Checking account opened sometime later, I believe.

Q. That's right. I won't ask you to go into it now. Now, Mr. Penney, you knew that Mr. Holland was Mr. Monroe shortly after these accounts were opened, isn't that correct? —A. I don't believe I knew at the time. In my memory, I believe it was after he left there that I knew his name was Holland.

Q. Well didn't you and he and Mr. Sims prepare and write an article each morning on the stock market for one of the papers up there?—A. I did not. Not that I know of.

Q. You weren't in that group?—A. I believe not.

Q. Now Mr. Penney, again, did I understand you to say that on the loan of July 18th, 1938, $1,450.00, there was put up as collateral a hundred shares of New York Central Railroad stock.—A. What date was that?

Q. Wasn't it July 18th, 1938?—A One hundred shares of New York Central.

Q. And also at that time two hundred shares of Paramount Pictures?—A. That's right.

Q. Mr. Holland owned that stock on the day that
270 he put it up as collateral, didn't he?—A. I presume so.

Q. Otherwise the bank wouldn't have taken it as collateral? Now what was the other stock that he put up later, Mr. Penney? I didn't get those when you talked on direct examination.—A. On September 6th he also showed a hundred shares of New York Central and a hundred shares of "S.P." which I presume is Southern Pacific. That's the ticker designation.

Q. Now these hundred shares of September 6th, the hundred shares of New York Central Railroad stock. Were these the same shares of stock that he had put up as collateral on July 18th, 1938, do you know?—A. I do not know.

Q. Your records don't show it?—A. It just says "one hundred shares of New York Central" one date, and a hundred another date.

Q. And it also shows at that time a hundred shares of Southern Pacific Railroad?—A. That's right.

Q. Now were there any other stocks put up at that time?—A. That's all our records show.

Q. The loans that you made to Mr. Holland. They were paid precisely on the date that they came due?—A.
271 Well they were paid before they were due.

Q. They were paid before they were due? Thank you very much.

Re-Direct Examination by Mr. Chittim.

Q. Was this a regular safety deposit box which Monroe had in your bank?—A. Yes, sir.

Q. Do you know of your own knowledge whether or not the security which was given for those loans was acquired in connection—whether or not the money for which the loan was given was used in connection with the acquisition of the security which was deposited?—A. I do not know.

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BERNARD A. BOEHNER, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—A. Bernard A. Boehner.

Q. Where do you live?—A. Helena, Montana.

Q. What is your employment?—A. I am employed by the Bureau of Internal Revenue in the Director's office, at Helena.

Q. Have you been directed by the Director of In-
272 ternal Revenue for Montana, in response to a subpoena, to produce the records and returns for income

tax figures of that office relating to the defendant, M. L. Holland, for the years 1944 and 1945?—A. Yes. At the Director's instructions I have brought with me the original 1944 and 1945 tax returns.

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Mr. Chittim: May the record now show that I am offering into evidence the exhibits marked for purposes of identification as Z and AA.

The Court: All right.

Mr. Bruno: If your Honor pleases, with respect to Government's Exhibit Z, we object for a number of reasons. First, that they neither prove nor tend to prove any of the matters at issue here. Second, they contain and have attached to the exhibit a number of self-serving declarations, which neither prove nor tend to prove any of the issues here. And for the further reason, if your Honor pleases, that under the Chapman case, it has already been decided that income tax returns for prior years are not admissible for any purpose. With respect to Government's Exhibit AA we object to that for the same reasons except the reasons with respect to the attachments.

273 The Court: Let me see them.

Mr. Bruno: I misinformed your Honor. That was not the Chapman case. It was the Rose case, in this circuit.

The Court: Well I want you to show me that.

Mr. Bruno: Yes, your honor.

The Court: Let me see the case.

Mr. Bruno: If your Honor pleases, Marjorie guards those books with her life, and she won't let us take those. It's 128 Federal 2nd, 622.

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Mr. Chittim: May the record show that certain letters that were attached to what is marked as Government's Exhibit Z have been removed therefrom, and that I re-offer Government's Exhibit Z in evidence.

The Court: Any objections?

Mr. Bruno: Well except for the objections that we have heretofore made, your Honor, we have none.

The Court: All right. The objections will be overruled and both of those exhibits, Z and AA will be received.

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Q. Now did you bring with you the records of
274 the Director of Internal Revenue's office, for the District of Montana, any records pertaining to any income tax payments by M. L. Holland for the years 1946, '47, and '48?—A. Yes, sir. I brought with me an original assessment list.

Q. Does that show any payments made in any of those years?

Mr. Bruno: Now if your Honor pleases, I object to any testimony along this line. The indictment charges that these returns were made in the district of Colorado and collected in the district of Colorado, and nothing else is pertinent here. It goes beyond the scope of the indictment itself.

The Court: What do you claim, Mr. Chittim?

Mr. Chittim: Those are payments which enter into the net worth computation. I am referring to whether he made any payments during the years '46, '47, and '48, which are the years charged in the indictment.

The Court: I want to see that document before you ask him what it shows.

Mr. Chittim: I am asking him if he has with him his records from the office of Internal Revenue which show the payments made by the Hollands, or by M. L. Holland, on income tax liability during any of those three years.

The Court: '46, '47, and '48?

Mr. Chittim: Yes. And he has told us that he has the original assessment listed.

The Court: All right. Go ahead.

Q. Now will you look at that record and tell us whether or not any payment was made by Mr. Holland during
275 the year 1946 on income tax liability?—A. On January 21st, 1946, there was a payment of three hundred

and two dollars made by Marion L. and Ethel E. Holland, which was the balance of the tax due on their 1945 return.

Q. Are there any other payments in that year?—A. That is the only payment in the year 1946.

Q. Are there any payments shown for the year 1947?

Mr. Bruno: Now just a moment. I again object, if your honor please. It goes beyond the scope of the indictment in this case. What he paid somewhere else is of no consequence, or whether he was liable somewhere else is of no consequence.

Mr. Chittim: If your honor please, this enters into the computation of his net worth.

The Court: How does it enter into the computation of his net worth?

Mr. Chittim: It's a non-deductible expenditure which has to be taken into consideration in computing or figuring the net income for each year.

The Court: Yes, I think on the net worth computation you'd have to have that figure or it would not be accurate.

Mr. Chittim: That's the sole purpose of this.

The Court: Objection is overruled.

Mr. Bruno: We object for the further reason, if your Honor pleases, that this man has not been qualified to testify with respect to these matters. As I remember
276 his testimony, he simply said he was an employee of the Bureau of Internal Revenue sent here with some papers. We don't know whether he is the bookkeeper, treasurer, cashier, or what.

The Court: Well, it wouldn't make any difference what he was. He has with him, he says, certain original records in the Office of the Director of Internal Revenue for the District of Montana.

Mr. Bruno: Would your Honor say that the janitor who cleans up the floors could—

The Court: I would say that any messenger who comes

down here with it could. All he is doing is talking from a document.

Mr. Bruno: Then the document itself will be the best evidence, and that ought to be admitted, if your Honor pleases.

The Court: Well, I think there may be something to that. Why don't you have that document marked, Mr. Chittim? If it is received, it will be done with the understanding that it may be withdrawn and a copy supplied, so that we don't tie up the records of the Bureau in Montana.

Mr. Chittim: If the court please, may I make this statement? This record is in the form of where his record is not separate from the record. It's in the form much as the same as the cards referred to. Large numbers of peoples' names will appear on it.

277 The Court: Well, you're only offering it for one thing, so we'll confine it to that. So let's have the record. This man doesn't know anything about that except what he sees on the record. As a matter of fact, if you had made the same objection down through the trial to reading from some of these other records, I would have sustained it. Now let me ask him two or three questions here. What's your job up here?—A. I am head of the intelligence division.

The Court: You're what?—A. Head of the intelligence division.

The Court: Are you the custodian of these records in any sense?—A. Ordinarily no, your Honor, but the Director instructed me to take them and bring them here.

The Court: You did not make the record?—A. I did not.

The Court: They are not kept in your office, in the intelligence division?—A. No, sir.

The Court: Well, you see he is just a messenger for these records, so you're going to have to put the records in if you can get them in. Let's expedite this a little bit. Mr. Chittim. Let's move along.

Q. I hand you what has been marked as Government's

Exhibit BB and ask you to tell me what that is.—A. That is a page of the Director's Assessment List for
278 June, 1946.

Q. And where did you get that record?—A. I got that record from the Director's Office in Helena.

The Court: By the "Director" you mean the Director of the Bureau of Internal Revenue for the State of Montana?—A. Yes, sir.

Q. And do you know of your own knowledge whether that came from the official records of the Bureau?—A. Yes. It came from the official files of these documents because I went with the man who selected them from the records. We went together and took them from the records.

Q. I now hand you what has been marked for identification as Government's Exhibit CC—A. You wish me to tell what that is?

Q. Will you tell me what that is?—A. That is the Director of Internal Revenue's Assessment List for February, 1947.

Q. And did that come from the original and official records of the Director of Internal Revenue for the State of Montana?—A. Yes, sir.

The Court: Well, now, did you pull that out of the records yourself?—A. I went with the man who pulled it out of the records.

The Court: I see. All right.

279 Mr. Bruno: May I enquire, your Honor?

The Court: Surely.

Voir Dire Examination by Mr. Bruno.

Q. What is your name again? Mr. Bochmer?—A. Boehmer, yes.

Q. Mr. Boehmer, you didn't prepare the exhibits yourself, did you?—A. I did not.

Q. And they were not prepared under your supervision?—A. No, sir.

Q. And you do not have custody of these records?—A. No. The Director has custody of them.

Q. And you don't know whether these records are true

and correct, of your own personal knowledge? Answer that yes, or no.—A. My only knowledge—No, sir. I did not prepare them.

Mr. Bruno: That's all.

Continued Direct Examination by Mr. Chittim.

Q. You do know that these came from the official files and these are not prepared records, are they? Aren't these original records?—A. They are an original record which is made up from the original income tax returns.

Q. And you were directed by the Director of the Bureau to produce them?—A. To produce them and bring them here.

Q. And these are the regular and official records that came from the regular and official records that are
280 maintained in the regular course of business in that office?—A. Yes, sir.

Mr. Chittim: If your Honor please, I now offer in evidence Government's Exhibits—

Mr. Bruno: We object, if your honor pleases, they have not been properly—

Mr. Chittim: —BB and CC.

The Court: Well do you know that these records which you have produced here are kept in the ordinary and regular course of business of the Office of the Bureau of Internal Revenue of Helena, Montana?—A. Yes, sir. I know that Assessment Lists are regular records that are kept in the course of the business of the Internal Revenue.

The Court: And the Director sent someone with you to pull those out of their files, out of the official files of his office is that right?—A. That is correct, sir?

The Court: You have had them in your custody since, and brought them here?—A. Yes, sir.

Mr. Bruno: Can I ask one more question, your Honor?

The Court: Yes.

Mr. Bruno: What is the regular course of business with respect to records in the Bureau of Internal Revenue?

281 The Court: Well, with respect to these records?

Mr. Bruno: Yes, or any records. He said it was kept in the regular course of the business. Now I want to ask him what the regular course of business is.—A. The regular course of business with regard to the preparation of those assessment lists? The returns are forwarded to the bookkeeping and listing department, and girl employees there list up those returns on the assessment lists, which are the documents I brought here. Then those assessment lists, the Collector certifies to them. They are sent to Washington, and the Commissioner of Internal Revenue certifies them for assessment and the Collector is charged with the entire amount of tax shown as due.

Mr. Bruno: These records are not certified by the Director, are they? These exhibits.—A. They are certified. There are many, many pages to one of those assessment lists, and the Director makes one assessment certificate covering the entire number of pages.

Mr. Bruno: I show you Government's Exhibits B and CC. Do you find the certification of the Director there anywhere? Just look at the exhibits please and tell us whether the certification of the Director appears on the exhibits.—A. The certification of the Director is not on the exhibits. But I do have with me the assessment certificate pertaining to that assessment list.

Mr. Bruno: That's all.

282 Mr. Chittim: If the court please, this is part of the original records, and I now move their admission into evidence.

The Court: Objection will be overruled. They will be received.

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283 Dwight F. Dulaigh, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—A. Dwight F. Dulaigh.

Q. Where do you live, Mr. Dulaigh?—A. Golden, Colorado.

Q. What is your business, or occupation, or profession?—A. Tax accounting.

Q. Do you know the defendants, M. L. Holland and
284 Ethel E. Holland.—A. I do.

Q. Did you prepare their income tax returns for the years 1946, '47, and '48?—A. I did.

Q. I show you what has been marked and introduced as Government's Exhibit A, which purports to be an income tax return for Marion L. Holland for the year 1946, and ask you whether you prepared that return—A. I did.

Q. Now, will you examine Government's Exhibit B and tell me whether or not you prepared that return for the year 1947?—A. I did.

Q. And will you make the same examination of Government's Exhibit C, which is the income tax return for M. L. Holland and Ethel E. Holland for the year 1948?—A. I did.

Q. Now, Mr. Dulaigh, will you tell us where you got the information that you used in preparing these returns?—A. From the books which I kept on the Holland House.

Q. You kept the books on the Holland House?—A. Yes, sir.

Q. During what period of time did you keep those?—A. '46, '47, and '48.

Q. Now where did you get the information which you used in keeping the books?—A. From the records supplied by Mr. and Mrs. Holland.

285 Q. What records did they supply to you?—A. May I show you? May I get them? That's the form of the records that I received.

Q. Now will you tell us of what that record consisted? Can't you just tell us?—A. Well, the check books—

Mr. Bruno: Now the records are here, if your honor pleases. They are the best evidence.

The Court: No. No, he didn't offer anything yet. He's got something else in mind. He's asking this man where he got his information from which he made the entries in the books. Now he can tell us that without offering the documents themselves. As a matter of fact I am going to

permit the inquiry: What were the various items of information that Mr. and Mrs. Holland gave him.

Mr. Bruno: We don't have any objection to that.

The Court: From which he got the data which he put in the books. Now you may inquire about that. Do you understand the court's question?—A. Yes.

The Court: Now you tell us about that. You don't need to pick up each one of those documents. You're a bookkeeper. You can tell us in a few minutes what sort of information the Hollands gave you from which to make the entries in the books.

Q. Will you tell us with respect to receipts? First of all, what information you had for preparation of your books.—A. The receipts come from a daily sheet, which was received by me at the end of the month, and were posted in the books.

286 Q. Now let me see if I understand you accurately. You received at the end of the month a daily sheet for each day of the month?—A. That is correct.

Q. Now what appeared on that daily sheet?—A. I'd like to get one and read it from the sheet to show you. May I do so?

The Court: Where did you get that sheet?—A. I get the sheet from Mrs. Holland.

The Court: All right.—A. Who prepares the sheet.

The Court: Now you had a different sheet for each day? —A. Yes, sir.

The Court: And at the end of the month you got a sheaf of those sheets, which purported to reflect receipts for each day of the month, for all the days?—A. That is correct, sir.

The Court: All right.

Q. That was all tabulated on one sheet?—A. No, it was individual sheets, with the bills paid in cash attached thereto.

Q. Did you receive the cash register tape?—A. No, sir.

287 Q. Did you receive any information with respect to the bank deposits?

Mr. Zarlengo: Now if your honor pleases, don't we have to first prove that there were bank deposits, and don't we have to first prove that there were these register sheets?

The Court: No. We're going to let this man tell us where he got the information on the basis of which he made entries in his books.

Mr. Zarlengo: That's not what was asked, your honor. I respectfully submit it.

The Court: Well now a better way to get at this. You're a bookkeeper. You can tell us where you got the information about receipts. There's going to be two sides of this bookkeeping of yours. On one side you're going to show receipts, and on the other side, expenditures?—A. Yes, sir.

The Court: Now show us where you got the data for the receipts first, and then after we've got that— —A. The source of information for the receipts is from the daily sheets, as I described.

The Court: Now was there any other source?—A. No other source.

The Court: That's all the information you had on which to make the book entries?—A. No, sir.

288 The Court: All right. We got that settled.

Q. Now how about the expenditures?—A. The expenditures came from two sources. The cash expenditures from daily report sheets, and for cash paid out from the check stubs.

Q. Did you have any information at all with which you either could or did check the total amount of receipts furnished you by the Hollands?

The Court: That's an awkward way of putting it. Rephrase your question, Mr. Chittim.

Q. Did you have any information at all with which you could compare the receipt totals which were furnished you by the Hollands?

The Court: Compare them with what? Do you have anything with which to compare them?—A. Oh, no.

The Court: Did you have any check upon the authenticity of the figures?—A. No.

The Court: You accepted what Mr. and Mrs. Holland told you about that?—A. Yes.

The Court: Now Mr. Chittim, why don't you go ahead and make your own examination?

Mr. Chittim: All right, sir.

Q. In the course of the keeping of these books during the years 1946, 1947, and 1948, did Mr. Holland at any time mention to you an undeposited cash fund, out of which he made purchases and expenditures?—A. I
289 don't recall that he specifically stated that he had a cash fund from which he would go and withdraw the money. However, if he wanted to buy something, it made no difference to him whether he paid cash or check.

The Court: That's not responsive at all. It's a conclusion of the witness. Did he ever mention any such fund to you? That's the question.—A. He never mentioned any such fund that I can recall.

Q. Did he ever mention to you any large fund in excess of one hundred thousand dollars at any time while you were keeping the books?—A. Prior to the commencement of this investigation, no.

Q. Now where were these records kept, Mr. Dulaigh?—A. In my office.

Q. Who made the entries?—A. I have a young lady bookkeeper that makes the entries for me.

Q. Did you bring those books with you in response to my request?—A. I did.

Q. Do those books contain a depreciation account, or schedule?—A. They do.

Q. Does that show the dates of acquisition of the property additions and improvements?—A. They do.

290 Q. Will you turn to your depreciation schedule? Can you tell me from that depreciation schedule whether you have a set up depreciation on 1500 Ford Street?—A. I do.

Q. What does that show as regards the date of acquisition?—A. Date acquired, May 8th, 1947.

Q. And what was the cost of that acquisition as shown by the books?—A. I have the cost broken down to Land, $1,500.00, Frame building, $6,000.00.

Q. Now does that show any improvements in connection therewith?—A. Yes, sir.

Q. And what does that show with reference to date acquired and amount?—A. There was improvement on 9/11/47, in the amount of $1,585.00.

Q. Is that identified in any way?—A. I'd have to check the check-stub to identify it.

Q. Are there any others?—A. Yes, sir. On 8/16, of '48, there is an improvement in the amount of $740.00, which is a gas conversion.

Q. I show you what has been marked as Government's Exhibit E, Southern Equipment Company sales to La Ray hotel, and ask you whether you find in your depreciation schedule anything which reflects that item?—A. Pertaining to 1500 Ford Street?

Q. No, no, to the La Ray Hotel.—A. To the entire hotel?

291 Q. Yes.

Mr. Bruno: What's that exhibit number again?

Mr. Chittim: That was E.—A. Exhibit E, yes, sir.

The Court: Now I am wondering, Mr. Chittim. You had an opportunity to talk to this man before you put him on the stand?

Mr. Chittim: No, but he gave us a statement.

The Court: Well, if you have a number of capital items.

Mr. Chittim: I have only two, your honor, that we want to check, to ask him about. That is all.

The Court: Do you claim they are there, or do you claim they are not there?

Mr. Chittim: That they were not there at the time he prepared his income tax returns, consequently they are not recorded.

The Court: Well then, he's got to examine all of his documents to see whether they are there or not. Now why

don't we have him step down and proceed to that. You tell him what you want him to look for.

Mr. Chittim: He had previously given us a statement in regard to it.

The Court: All right. Step down from the box.

Mr. Chittim: May I give him the other ones?

292 The Court: Just hand them to him. You go across the hall to the jury room.

Mr. Chittim: May I give him one word of instruction? Will you examine your books and see whether those items were reflected in your books at the time you made your income tax returns for '46, '47, and '48?

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ALBERT R. GARVIN, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name, please.—A. Albert R. Garvin.

Q. Where do you live?—A. Denver, Colorado.

Q. What is your employment?—A. I am a Special Agent with the Bureau of Internal Revenue.

Q. Do you know the defendants, M. L. Holland and Ethel E. Holland?—A. Yes, sir.

293 Q. In what connection?—A. In connection with our investigation of their income tax liability for the years 1946, '47, and '48.

Q. Did you personally make an examination of the books and records and cancelled checks of the defendants in their business account at the First National Bank of Golden?—A. Yes, sir.

Q. Did you make a determination in connection with that investigation of the amount of checks dated 1946 which did not clear the bank until the year 1947?—A. I did.

Q. Will you state what the amount of those were?—A. $3,976.90.

Q. Now did you make a similar determination for the end of the year 1947?—A. I did.

Q. Checks written in 1947, or dated 1947, which did not clear the bank until 1948?—A. Yes.

Q. What is that amount?—A. $8,835.82.

Q. Did you make a similar determination with regard to outstanding checks for the end of the year 1948?—A. Yes, sir.

Q. And what was the number of checks written during the year 1948 which did not clear the bank account until 1949?—A. The total amount, $6,622.08.

294 Q. Now did you personally examine the books of the defendant?—A. Yes, sir.

Q. Did you examine and make a transcript of the depreciation schedule?—A. I did.

Q. Can you tell me from that examination whether or not the items reflected in Government's Exhibit E, investments of the Southern Equipment Company in the amount of $7,965.06, is reflected in those books?

Mr. Bruno: Just a moment. To which I object. This witness has not been qualified to express an opinion, if your honor pleases.

Mr. Chittim: I am not asking for an opinion.

The Court: Objection is overruled. He may answer.—

A. That item was not on the depreciation schedule at the time of our examination.

Q. Now have you examined the income tax return marked as Government's Exhibit A, or rather C, for 1948, to determine whether that is reflected in the depreciation schedule on there?—A. Yes. I examined that return and it is not reflected there.

Q. It is not reflected there. Now can you state from your examination of the books whether or not the items reflected in Government's Exhibits F, G and H, reflected by invoices for equipment from the Carson Crockery Company in the amount of $4,283.44 was reflected in defendant's books?—A. Those items were not reflected in the books at the time of our examination.

295 Q. Have you examined the income tax return for the year 1948, Exhibit C, to determine whether that item is reflected there?—A. It is not reflected there.

Mr. Chittim: You may cross examine.

Cross Examination by Mr. Zarlengo.

Q. Mr. Garvin, you say that you examined the books of Mr. Holland?—A. Yes, sir.

Q. What books did you examine?—A. The books which Mr. Dulaigh has brought to the courtroom this morning.

Q. The Hollands made available to you all the books and records that they had, is that right?—A. They did.

Q. And you had these books and records over a considerable period of time?—A. The books and records themselves never left Mr. Dulaigh's office.

Q. Over what period of time did you examine them?—A. From about September until approximately December of 1949.

Q. A period of approximately four months you were examining the books and records?—A. Yes.

296 Q. And did you examine these daily sheets that have been referred to here?—A. Yes, I did.

Q. And those daily sheets reflected the receipts that were received during the day?—A. They reflected the receipts as furnished by the Hollands to Mr. Dulaigh.

Q. Well you had available to you whatever records there were, so you could check those receipts, could you not?—A. I did.

Q. And it also showed the expenditures that were made? —A. It showed the cash paid-outs.

Q. Well I mean this. Wherever there was a "cash paid-out," something paid for in cash, the receipt was included in the daily report, was it not?—A. It was.

Q. So that Mr. Dulaigh would have a receipt for whatever cash was paid out for any particular item?—A. It was.

Q. And that showed what was purchased and how much was paid for it?—A. Yes.

Q. And that was included with each daily report, was it not?—A. It was.

Q. Now when the expenditure was made not by cash but by check, then there was a stub and a cancelled check to show what that expenditure was?—A. That is right.

297 Q. And by examining the stub it could be determined the date the money was paid out, to whom

it was paid, and for what it was paid, isn't that correct?—A. That's right.

Q. And all of that information was available to you when you were examining these records over this four months period?—A. They were.

Q. Now as I understand it, you have testified here that there was some equipment purchased from the Southern Equipment Company?—A. Yes.

Q. In connection with the restaurant, was it?—A. Yes.

Q. Do you know when that was acquired?—A. I think in January of '48.

Q. In January of '48. Was that paid for by check?—A. It was.

Q. So that there was a record that this equipment was purchased, namely the cancelled check?—A. That's right.

Q. And that equipment was $7,965.06?—A. Yes, sir.

Q. And the cancelled checks were available to you at the time you examined these records, were they not?—A. If my memory serves me correctly on that, Mr. Zarlengo, why the information on the checks from the U.S. National Bank of Denver, we obtained from the bank's record.

298 Q. Well the cancelled checks of the Hollands were up there with Mr. Dulaigh, were they not?—A. No, they were not.

Q. Did you ask for these cancelled checks?—A. No, I don't remember—

Q. You don't remember whether you asked them for the cancelled checks?—A. That's right.

Q. Anything you did ask for, they gave you?—A. That is correct.

Q. And you don't remember having asked for these items?—A. No.

Q. And this record accounting—you could find that particular item as well as any other items paid by check, isn't that right?—A. That is true.

Q. And you say that they did not take credit for that in their income tax returns?—A. It was not entered on the records, no, sir.

Q. Now isn't it true that if you buy seven thousand dollars worth of equipment for your business that you're entitled to set that up and take depreciation on it if it's a capital item, or if it's ordinary expense you can deduct it

from the return as an expense of the business?—A. That's depreciation, yes.

299 Q. And if that had not been overlooked in that return it would have reduced the amount of that tax due that year?—A. Yes, it would have been in depreciation.

Q. Assuming now that these were capital items—I don't know whether they were or not—but if it was a capital item used in connection with the business then the taxpayer has a right to set up that item and take off so much each year for depreciation?—A. That's right.

Q. And the amount you deduct any one year for depreciation is deductible for your gross income?—A. Yes, sir.

Q. And the effect of that is to reduce the tax due in that particular year?—A. That's right.

Q. So that had this been set up, the tax for the year 1948 would have been less than the amount that the Hollands paid, is that correct?—A. It would have increased the depreciation and lowered the tax return.

Q. And by increasing the amount of the depreciation it would have lowered the amount of tax due?—A. That is correct.

Q. So that they would have been obligated to pay the Government less than they actually paid were it not for that oversight?—A. That is correct.

300 Q. And the same thing is true with regard to those items purchased from the Carson Supply Company, is that right?—A. Yes.

Q. Had those been properly set up, the amount of tax would have been reduced by the amount of depreciation?—A. It would have decreased the taxable return.

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GEORGE N. DREW, a witness for the Government, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. State your name.—A. George N. Drew.

Q. Where do you live?—A. Denver, Colorado.

Q. What is your profession?—A. I am technical ad-

visor in the Intelligence Division of the Bureau of Internal Revenue, of Denver.

Q. That is your present employment?—A. That is my present employment.

Q. How long have you been with the Bureau of Internal Revenue?—A. Fifteen years, roughly.

Q. And how long have you been in your present position?—A. About four years.

Q. Are you an accountant?—A. I am.

301 Q. Are you a certified public accountant?

Mr. Bruno: The answer to that is either yes or no, your honor.

A. I have a certificate from the State of Wisconsin and one from the State of Minnesota. And I am also a member of the Colorado Society of Certified Public Accountants.

Mr. Bruno: Now I ask that that be stricken as not responsive, if your honor pleases.

The Court: That's his objection and not yours. Objection is overruled.

Q. Did you have any accounting experience before you became connected with the Bureau of Internal Revenue?—A. Yes, approximately twelve years.

Q. What was the nature of that, and where?—A. Public accounting as a free-lance, on my own hook, for about ten years, and about two years as chief of the field for a firm of Minneapolis accountants who are no longer in existence.

Q. Did that work include tax liability computation?—A. It did, yes.

Q. Did it include reconstructing tax liability by net worth method?—A. It did. Among other things.

Q. Now what is the scope of your work with the Bureau?—A. I am required to check the reports of all of the Special Agents and eliminate any inaccuracies, checking their computations of income, either by direct or indirect

302 methods. In other words, to see that no boners get through before the case leaves our office in the matter of computation.

Mr. Chittim: If the court please, I request that this witness be permitted to testify.

The Court: Just go ahead and ask him questions, and we'll see.

Q. Mr. Drew, assuming that on January 1, 1946, the Hollands had no cash on hand; further assuming that the balances in the two bank accounts—there were balances in two bank accounts of a total of $2,153.09; that there were seven hundred shares of Twentieth Century Fox Common stock pledged as collateral with the U.S. National Bank, which stock cost $20,650.00, as claimed on the 1946 return; and further assuming three hundred shares of Midland Steel common pledged as collateral with the U.S. National Bank, which cost him $9,000.00 as claimed in his 1946 income tax return; and further assuming that on January 1, 1946, the Hollands were indebted to the Aussom Investment Company in the amount of $506.66, to the U.S. National Bank, Denver, Colorado, in the amount of $11,783.84, and to the New York Life Insurance Company in the amount of $440.00, what was the net worth of the Hollands on January 1, 1946?—A. Based on those figures?

Mr. Bruno: Well now just a moment. Your honor, we want to make an objection on this. They're assuming a number of facts that are not in evidence. First of all, he started by assuming that the Hollands had no
303 cash on hand January 1st, 1946. There is no evidence that this witness knows anything about cash on hand at this time, and the undisputed evidence up to this time is that he did have cash. They have introduced the statement where he told them the amount of cash that he had. Mr. Bodley's testimony all the way through was with regard to cash on hand. As a matter of fact there was testimony with regard to money turned into banks, gold money, and other money received.

The Court: I think that that is correct, Mr. Chittim. In the first place, quite apart from that ground of objection, this isn't a subject of expert testimony. All you're talking about is asking somebody to make an arithmatical computation and state it to the jury. Now as a matter of fact, you can do that in your argument to the jury. You can make any assumptions you want about whether he had the cash money or whether he didn't, and of course the theory of the government is that he didn't have the

money, and the theory of the defendant is that he did, and that is in issue in this lawsuit. And the jury is going to tell us the answer to that one. But now, all you're doing—this isn't really a proper hypothetical question to be addressed to an expert witness, because all you're asking the man to do is to make a computation for you upon some assumption. Now you can make your own assumptions and make your own computations, and argue that to the jury. So I don't think this is a proper subject for an expert witness to testify about.

Mr. Chittim. I can make the tabulations, but I need an expert to compute the tax.

304 The Court: Well he can tell you what it is, and if all these factors in your computations are in evidence, you can add them up, and if they are not in evidence, we won't let you add them up.

Mr. Chittim: I know that.

The Court: So what do you need this man for? Now this is the thing we had last week in here we had all the trouble about. You put a C.P.A. on the stand and ask him to make a little jury speec' to the jury. That's what you're doing really. It isn't going to help this case any, so far as you're concerned, whatever this man says. Either these facts are in evidence, or they aren't in evidence. Last week we had an accountant who got on the stand and got himself all exercised up and made jury speeches, waived his arms and shouted. I thought for awhile he was a lawyer. No, I don't think this is a proper subject for an expert witness. As a matter of fact, it doesn't help or hinder your case one little bit.

If these factors are in evidence, and most of them are—of course you're going to have a chart, I imagine, on the blackboard, showing what his net worth was. That is all you're asking the man to testify to. No, I don't think I shall permit that to be in evidence. It looks as though I'm going to be trying some of these income tax cases over the next few years. I am going to start laying down the rule—a precedent or two about letting accountants make jury speeches.

305 Mr. Chittim: The only question I have was simply the calculation of the net worth.

The Court: Well you can calculate that. Well, nov , don't argue that to me. I'm not going to permit you to do it. Now if you've got something that is a real subject for testimony from an expert witness, why of course we'll hear it. My position on this one is that not only are you basing this hypothetical question upon one item at least that is not in evidence, as counsel has pointed out, but also you're addressing a question to him on a subject which is not a proper subject for expert testimony. All you're asking him to do is to make a computation for you from the witness stand. You can argue that to the jury. But my position on this is that I am not going to permit a certified public accountant to take the witness stand and argue from the witness stand.

Mr. Chittim: Would the court permit his computation of the taxes which would be liable under the net worth assumptions that I have made?

The Court: Well now, I think you may be getting at something. Of course I don't know what your question is going to be. The only way we can tell is to ask the question. This last question is improper and I shall sustain the objection to it. So go ahead and ask the next question.

Q. Now, Mr. Drew, assuming a man in a single status, unmarried, in the years 1913 to May of 1917, and the same man married and living with his wife from then on until the end of 1933, with the credit for one dependent
306 beginning in the year 1924, what is the maximum taxable income which such a man could have in each of those years without having a liability for a federal income tax?

Mr. Bruno: To which I object, if your honor pleases. There is no evidence in this case that Mr. Holland was an unmarried man in 1913. All your honor has, and the jury, is my statement that he married Mrs. Holland on a certain day. Again he is assuming something that is not in evidence.

The Court: How about that?

Mr. Chittim: The Question and Answer statement which is here, and which they had introduced into evidence, shows those facts.

Mr. Bruno: They show they were married in 1918, your honor, but don't show they were not married in 1913.

The Court: Is there anything in the evidence, Mr. Chittim, to show that Mr. Holland was an unmarried man, and Mrs. Holland an unmarried woman, until the two married? Now you have got to base these hypothetical questions on the evidence.

Mr. Chittim: I think the evidence will not establish that, sir.

The Court: I don't think it does either. All right. Ask your next one. Objection to that will be sustained.

Q. Mr. Drew, assuming for the period 1917 to 1933, a married man living with his wife, with a credit for one dependent beginning in the year 1924, what would be the maximum amount which he could receive in any one of those years, from 1917 to 1933, inclusive, without incurring a federal income tax liability?

307 Mr. Bruno: Just a moment. To which I object if your honor pleases, for the same reason. There is no testimony here that the Hollands—how many dependents they had during these years.

The Court: Well, I don't think that's true, Mr. Bruno. The record is that Mr. and Mrs. Holland were married and they have one son.

Mr. Bruno: The record is also, if your honor pleases, that they had two other sons that died. It's right in that transcript.

The Court: What about that, Mr. Chittim? What does the transcript show with respect to the age of those children?

Mr. Bruno: I don't think it shows anything, your honor, with respect to their ages, but I can point it out to your honor in just a moment.

The Court: All right. Let's see it.

Mr. Bruno: I said there were two boys. I think there were two girls. Here it is, your honor. Question: This is in Mrs. Holland's statement. Q. "How many children do you have?" A. "We have one living. We lost two."

The Court: Well, you see your question is not in conformity with the evidence here. These hypothetical questions are no good unless every assumption is in evi-
308 dence. And they are no good even if every assumption is in evidence if the question you direct to the witness is not a proper subject for expert testimony. I don't see why you get at this expert testimeny anyhow. But this is your lawsuit. You go ahead. Objection will be sustained to the last question.

Q. Mr. Drew, assuming for the period 1917 to 1933, a married man with a wife—married and living with his wife—and with three children as dependents for the entire period, what is the maximum income which he could have received in each of those years, 1917 to 1933, without incurring any federal income tax liability?

Mr. Bruno: Now I object to that, if your honor pleases, because there are a great many other things besides dependents before he incurs tax liability. The question of where the money comes from, whether it's from municipal bonds which are tax exempt, etcetera. All of those things. Whether he has had any medical expenses, etcetera. Donations—a lot of things go into his tax liability.

The Court: I don't believe you have assumed all the factors you need. A man could have a very large amount of interest on tax free bonds and not be liable to any federal income tax liability.

Mr. Chittim: Strike that question.

The Court: Now not only is it a question of tax free bonds, interest, but a man's circumstances vary from year to year with respect to his deductions. As a matter of fact, I believe now you can deduct up to five percent
309 of your gross income as an individual, or is it fifteen percent?—to make charitable contributions. Now how about that fact? As a matter of fact, Mr. Chittim, I don't see how you're going to do this that way. I don't see how

you're going to do it that way, and I don't see how your case is helped or hurt much whatever you do with this expert witness. What you're really getting at is a computation which you can make yourself and argue to the jury. You are going to start with some assumptions. You'll make the assumptions that are favorable to the Government. Defendants' counsel are going to make assumptions that are favorable to the defendants. And then you're going to argue those things to the jury. Now what you're in effect doing is offering a little piece of circumstantial evidence. You're offering a little piece of circumstantial evidence in the form of a computation. You want the computation to be the largest amount of income a fellow could have without any tax liability arising, and then when the jury takes a look, from that you're going to argue from that the inference that he could not, with that kind of income, accumulate a sum of money such as he has claimed he had. Isn't that your purpose?

Mr. Chittim: That's the gist of it.

The Court: All right. Go ahead.

Mr. Chittim: Will you strike that last question please?

Mr. Bruno: Now wait a moment, your honor. We don't strike any questions when the court sustains the objection.

310 The Court: Well he didn't mean that. Objection is sustained to the last question. Go ahead. Frame your new question.

Q. Mr. Drew, for the period 1917 to 1933 inclusive, assume that the taxpayer, a married man living with his wife throughout the period, with a credit for three additional dependents throughout the period, what is the maximum taxable income which he could have received in each of those years during the period without becoming liable for a federal income tax?

Mr. Bruno: To which I object for the same reason, if your honor pleases.

The Court: Sounds to me like the same question.

Mr. Chittim: A difference only in the use of the word

"taxable" income, which gets around the objection if there are any explanations of income from other sources.

Mr. Bruno: Now we object to that question, your honor.

The Court: I'm just wondering. We've had half a dozen assumptions. I'm wondering if this fellow could answer all these.

The Witness: I'm going to have to throw another monkey wrench into the works. I have no figures on the exemptions for defendents prior to 1937.

The Court: Well, now, step down. Objection will be sustained. Now, Mr. Chittim, let's move on to the next witness.

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311 DWIGHT F. DULAIGH, a witness for the Government, was recalled to the stand, and having been previously sworn, testified as follows:

Direct Examination by Mr. Chittim.

Q. Mr. Dulaigh, when you were on the stand before you were shown Government's Exhibit E and asked to determine whether or not that was reflected in your depreciation schedule.—A. At the time that this item originated it was not put in the books, but it since has been put in there for purposes of depreciation. What slowed me up this morning, your honor, was I was looking for the figure on the face of it, which is the incorrect figure, and the amount that was actually paid I discovered was here on the back, and that is the figure that's in the book. That's the reason I couldn't put my finger on it for you this morning.

Q. Was the information on that furnished to you by the Hollands before you prepared their income tax returns?—A. No.

312 Q. Now I show you what has been marked as Government's Exhibits F, G and H, and ask you if you have now made a check of your books to ascertain whether those were entered on your books at the time you prepared the income tax returns?—A. Exhibit F I find no record of in my books for the year under discussion, or

has since been entered. In other words, that figure has never been given to me to my knowledge. Exhibit H, the same applies. And Exhibit G—if your honor will permit me to cover the exact status of it. There are several names on here. There are a lot of markings. And I can't determine the totals, whose writing is what. And from the standpoint of Exhibit G, I do not know whether it is or is not in the books.

Q. Very well. Now, Mr. Dulaigh, did you have any conversation with Mr. Holland after 1948 with respect to why this Southern Equipment item was not given to you?

The Court: Now it just seems to me there is a tempest in a tea-pot about some of these items, and this is one of them. Come up here Mr. Chittim and tell me what you claim for that. Come up here counsel.

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Mr. Chittim: The Government rests, Your Honor.

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Defendant's Motion for Judgment of Acquittal or Directed Verdict.

313 Mr. Bruno: If your honor pleases, at this time the defendants and each of them move this honorable court for a judgment of acquittal, or in the alternative, to direct the jury to return a verdict of not guilty of each of the several counts of the several indictments, as they pertain to these defendants. And as grounds therefore, these defendants would show your honor as follows:

That the Government has failed to establish by any proof that an additional tax for any year, 1946, 1947, and 1948, is due and owing. Indeed, if your honor pleases, it was established from the testimony of Mr. Heft that for the years 1947 and 1948 Mr. and Mrs. Holland had overstated their taxes and that a refund had been made. This is corroborated by the testimony of Mr. Garvin. The gist of the offense, if your honor pleases, in this type of case, is that a tax is due and owing. There are a long line of unbroken precedences in the United States in the various circuits. Almost every one of them has a case on that point, if your honor

314 pleases. They state this proposition flatly. The Government must prove that a tax in addition to that paid is due and owing for the years in question. I call your honor's attention to the United States against Skink, 126 Federal 2nd, Page 702. That's a Second Circuit case, decided in 1942; United States against Rosenbloom, 176 Federal 2nd; Tinkhoff versus the United States, 86 Federal, 868, in the Seventh Circuit; Pummelpart versus the United States, 175 Federal 2nd, 924, in the Ninth Circuit, decided in 1949; United States versus Chapman, 168 Federal 2nd, 997. That's also a Seventh Circuit Case, 1948; and Schumann versus the United States, 174 Federal, 397, of the Eighth Circuit.

For the further reason, if your honor pleases, that the Government has not established by any proof the exact and precise net worth of the defendants as of January 1, 1946, nor have they excluded all the possible resources from which the alleged increase in net worth could have come. Let me illustrate to your honor. You will remember that Mr. Davis, the cashier of the U. S. National Bank, testified that from 1942 to December of 1946, Mr. Holland had pledged as collateral with his bank for loans, four thousand eight hundred and fifty shares of stock. He named the stock and the number of each. Your honor will further remember that he testified that of these four thousand eight hundred fifty shares, thirteen hundred of them were sold in February of 1946, and that they were sold on three separate dates. The Government has failed to establish what happened to that stock. Did Mr. Holland own it on January 1, 1946, or had it been sold and disposed of? That is a very important element in this case.

315 The Bryan case, if your honor pleases, is specific authority for that proposition. If I were to change the name of Bryan to Holland in this case, we would have one on all fours.

Apparently my friend over here doesn't believe that, your honor. I'll illustrate it to him.

Judge Waller, a Circuit Judge in the Fifth Circuit, on May 13, 1949, in Bryan versus the United States, decided this case as follows: If your honor will put up with me just a little longer, I can illustrate this. I want to read it

to you because I know that this is authority for what your honor is about to do.

Listen. "Count 1 of the indictment alleged that in 1941 the appellant, wilfully and knowingly, attempted to defeat and evade a part of his income tax by filing with the Collector of Internal Revenue, at Jacksonville, Florida, a false and fraudulent income tax return. Counts 2, 3, and 4 charged him with having committed the same offenses in each of the years 1942, '43, and '44 respectively. The jury acquitted on Counts 1 and 2, but convicted on Counts 3 and 4. Two bills of particulars filed by the United States Attorney limited the alleged evasion to the understatement of gross receipts derived from the business operated by the appellant in each of the years. No claim is made that the deductions from income tax returns of the appellant were unallowable. None were made here, fictitious or false.

316 Measured as the proof must be by these bills of particulars, the conviction must stand or fall upon the proof or the lack of proof of false statements knowingly made for the purpose of evading income taxes in the return of gross business receipts for the years in question. No witness gave any direct testimony as to any specific instances of failing or refusing to account for gross business income." We had none in this case, if your honor pleases.

"Such records as were kept by the defendant make no such revelations. No evidence was produced from any book or records of the defendant showing gross income in excess of that reported." None here. "No proof has been produced of complicity in bookkeeping, in keeping more than one set of books. The Government attempted to show and did show by the testimony of approximately fifty witnesses, and by documentary proof, expenditures in each of the years of sums greatly in excess of the gross income reported for each year." As the Government has done here. "For instance, in the year 1943, the appellant reported as gross income the sum of $271,980.27, whereas the gross expenditure for the year was $293,251.45. The Government insists that the defendant's net worth during the year was increased by expenditures made in excess of reported gross income to the point that his net income was $23,615.95, rather than $1,814.67 as reported. In the year 1944 the

gross income of the defendant was reported as one hundred fifty-four thousand and a few odd dollars. The Government proved that his total expenditures during the year in question was two hundred twenty-nine thousand dollars and some odd, and after making certain allowances and deductions, it insists that his net income was understated for that year in the sum of eighty-one thousand some odd dollars."

317 The Court says: "The evidence is clear that the defendant spent considerably more money during these years than his reported gross income. It was also demonstrated that his capital assets were increased each year in proportion to the expenditures in excess of gross receipts, but defendant contends that the evidence wholly fails to show that the expenditures in excess of reported gross income came out of current receipts and not out of available receipts acquired in prior years."

Now see how close this case is to ours, if your honor pleases? The court says: "The difficulty in the case lies in determining whether or not the net assets of the defendant, owned at the beginning of the period in question, and still held at the date of the alleged violation, were accurately ascertained and definitely established by the auditor for the Bureau of Internal Revenue. That was the question. There were available to the auditors no financial statements, no books of the defendant showing assets and liabilities, and no admissions by the defendant that could be used as an admitted or definite point of beginning by which to determine income by the 'net worth expenditures basis' as was attempted in this case."

Now listen to this, Judge Ritter. You're a student of this tax law. "In the absence of an admitted or definite statement that bound or tended to bind the defendant as
318 to his net worth on January 1, 1941, the auditor for the Bureau undertook to compute such net worth from the records of conveyances, bills of sales, mortgages, bank deposits, income tax returns, and such other information as he could find, and which he considered reliable. After resorting to all known and available sources of information, the auditor computed the defendant's net worth as of January 1, 1941, at $107,108.00 This figure was based chiefly on the cost of real estate, furniture and fixtures in

the night club and gambling places of the defendant, and included only $40.70 cash in the bank. The auditor was unable to find where the defendant had kept any bank account prior to 1940. Defendant, who was engaged in operating night clubs, gambling spots, and bars, during the years involved, had been a purveyor of illicit liquor in the prohibition era, and according to the testimony of his wife had amassed and secreted in a safe, in a closet in his home, considerable wealth. The net worth expenditure method of establishing net worth, sought to be applied in this case, is effective only if the computations of net worth at the beginning and at the end of the questioned periods can reasonably be accepted as accurate. Since the bill of particulars in this case admits that no claim of evasion is based upon the deductions from gross income reported by the defendant, and since there is no evidence that gross expenditures by the defendant in any year were made directly from gross income of business operations of such year, it was essential for the Government to present evidence that excluded, or tended to exclude, all other available sources from which the additional funds expended could have been derived. If the defendant correctly reported his gross income, then a very substantial part of the expenditures was obliged to
319 have been made from funds other than such current income, and from sources not covered by the return or the records of the defendant, or included by the Government's computation of net worth. During the years 1943 and 1944, covered by counts 3 and 4 in which the defendant was convicted, the defendant's expenditures exceeded the gross income of his business by approximately a hundred thousand dollars. Obviously, therefore, defendant either falsely stated his gross receipts, or had available to his use assets not revealed by the auditor's computation of his net worth at the beginning of the period involved. The defendant did not take the stand, but his wife did, and testified that when she married the defendant in 1926 he was a bootlegger, possessed of approximately one hundred eighty thousand dollars, the residue of which was kept in a safe in a closet of their home until November 4, 1940, when she rented a box at the Florida National Bank of Jacksonville, where she put between a hundred and fifty and a hundred and sixty thousand dollars in cash. She further testified that

she paid one of the large expenditures of forty thousand dollars involved here by taking that much cash from the locked box, depositing it in the bank, and giving a check thereon, all on the same date. The records of the bank show that the locked box was opened by her on that day, on the date of the forty thousand dollar check, and tended to corroborate her to that extent. She also testified that
320 she withdrew money when she needed it from this locked box. Thus the defendant undertook to account for the difference between the amount of his expenditures in excess of the amount of his current gross income during the period, as well as their source. Obviously, and seemingly with good right, the jury did not believe the wife's testimony. But we cannot escape the fact that Mr. Marcus, the auditor, frankly admitted that he did not know whether his computations contained all of the assets of the defendant or not. The substance of his statement was that it contained all of the assets which he, as an auditor of much experience, could find."

Then this trial Judge, being the student that he was in tax cases, asked these questions of the auditor, your honor. The auditor gave the following testimony: "By The Court. Question. If you overlooked any asset that the defendant had in your calculations, then your calculations would be in error, or subject to revision? Answer: Yes, sir. Question: And you don't mean to say that he had no money whatsoever other than what is shown in the bank account, shown on January 1, 1941? Answer: I didn't say that. Question: Does your audit assume that? Answer: That is all the money we could account for. Question: And you took into consideration only recorded purchases that you could find? Answer: That was all I could take. Question: That was all you could take? Answer: Yes. Question: During the course of examining Mr. Bryan, did you enquire into the cash sales that he made prior to that time? Answer:
321 No. Question: Did the department, or someone in your presence, in one of the Government departments, make inquiries into that? Answer: I would not know. Question: Yet up until that time you had never found a bank account until 1940 that Mr. Bryan had? Answer: No. Question: And yet you assume that the only monies he had were in the bank on the first day of January, 1941? Answer:

That is all we took into account. Question: You don't know whether he had a lot of other money or not? Answer: No, sir."

"These admissions" said the court "are serious in this case, because the Government must rely almost entirely upon circumstantial evidence. That is to say, upon the circumstances of the expenditure of considerably more money in the years in question than the defendant took in from the operation of his night clubs and gambling enterprises. The evidence being circumstantial must exclude every reasonable hypothesis other than the guilt of the defendant. The jury no doubt disbelieved and had the right to disbelieve Mrs. Bryan's testimony, but in view of the auditor's admission that he was not able to say that his computations included all of the assets of the defendant at the beginning of the period, together with the absence of any admissions, records, financial statements, bookkeeping entries, or other findings or evidence tending to bind the defendant as to the lack of additional assets at the beginning of the tax period, the evidence in the light of the bill of particulars was insufficient to make out a prima facie case against the defendant on the net worth expenditure basis, and the case should not have been submitted to the jury since it
322 did not exclude the hypothesis that the funds used in making some of the expenditures might have been from sources other than the current business income. In view of the foregoing conclusion it is unnecessary for us to pass upon the other specifications of error. The judgment of the lower court is reversed, and the cause remanded for a new trial."

Let me say to your honor that not only did they fail to do that in this case, but on their case too. The cashier of the Casper National Bank testified that in 1938 Mr. Holland owned seven hundred shares of stock which he pledged as collateral for loans. What happened to that stock? Did Mr. Holland have it in January of 1946? Did the Government show, your honor, that he didn't have it? And then this morning, Mr. Penney of the Wyoming National Bank. I took pains with him. He said that Mr. Holland had in 1938 five hundred shares of stock. Now, all of which was put up as collateral just like the other. When you add those

figures up, Judge Ritter, you have a total of six thousand and fifty shares of stock; that the testimony is that thirteen hundred shares of stock were sold, so you can see the tremendous amount of value that the Government hasn't shown that the defendant did or did not have.

Now one thing they did show on the side of their case—it probably was rebuttal evidence—and your honor this morning in chambers probably scolded me so that I might know at another time that had I objected to the testimony—

323 The Court: No. Let's keep the record clear on that. The court didn't scold you, or make any suggestions about what you do in the next case.

Mr. Bruno: Well, the fact remains this, Judge, that Bodley got on this witness stand and testified that on January 1, 1946, Mr. Holland was worth a hundred and fifty-six or a hundred fifty-seven thousand dollars. Now that's their proof in this case. He is to be believed. That came in on their side of this case. If you add up all the expenditures and take that away from that hundred and fifty-seven thousand dollars, you will find that Mr. Holland still had in his bank account or in his cash reserve some thirty six or thirty nine thousand dollars. Now that might have come in in rebuttal, but it didn't. It came in there in their case in chief, and having come in their case in chief, it is testimony which your honor must consider in this case.

Now one other thing. What have they done with this thousand and twenty dollars of a cash surrender value of a New York Life Insurance Policy that they made the man come back and testify to? Have they taken that into consideration? Your honor doesn't know that. So you get back to the point as to whether or not they have accurately and definitely established his net worth as of January 1, 1946.

Now I pass on to the next point. Have they established the corpus delicti of this crime? By indirect evidence, other than the extra-judicial admissions of the defendant? They have offered here, if your honor pleases, the statement of the defendant in Question and Answer form. They
324 have offered in evidence too a couple of other statements that Mr. Bodley had. They have offered in evidence those four letters that I so strenuously objected

to yesterday, and which your honor admitted, and it has come into the testimony in several oral statements made by the defendant to other people. These, your honor, are all extra-judicial statements and admissions as against interest. When we objected to that testimony coming in at that time, your honor said, "Of course they can't try their case all at one time" and you were right. You indicated at that time that they would have to connect this up with other proof. Now, what other proof, if your honor pleases, have they brought into this case to show, to establish, that in 1946 and 1947 Mr. Holland attempted wilfully to evade his taxes? I say to your honor that those letters, those oral statements, go only to perhaps his net worth value. But your honor knows from your long experience, especially where we have oral statements made, they must be received with caution because the speaker may say something which he doesn't mean at all. The language which he uses may not bring out his meaning. The hearer may get a different impression, and then when he takes the stand and recites it, he, with a deflection in his voice or a change in a word, might very well throw out the entire meaning. I say to your honor that in this case they have not established the corpus delicti of the crime with evidence independent of the extra-judicial statements.

325 The circumstantial evidence received by the court is not of such character as excludes every reasonable hypothesis of innocence. Indeed it establishes the defendants' innocence, or at the very least it is just as consistent with innocence as guilt. Now in that respect I want to call to your honor's attention to the now famous case of the United States against Bennett, cited in 177 Federal 2nd at Page 488. I am going to read paragraph 3 of the court's opinion. "The weakness of the Government's position, stressed by the defendant, is the uncertainty of the propriety of the finding of the defendant's net worth at the beginning of 1943. Of course before the increased net worth method of proof is effective, the net worth of the taxpayer at the beginning of the tax year must be clearly and accurately established by competent evidence" Citing a number of cases, including the Chapman case and the Skidmore case. "By this rule we must test the sufficiency of the evidence" and it goes on to this case. Now if your honor pleases, I say that the Govern-

ment's case here has a number of weaknesses. They have not established that for 1946 the two installments which Mr. Holland made was not the tax really due. They have not established for '47 and '48 that the amount of tax that he paid was not due. Indeed the record as it now stands is that he overstated his tax.

With respect to the indictment against Ethel Holland on the Second Indictment, the one that your honor consolidated, where is there one single line of testimony in this regard that she aided and abetted in the preparation of a false return? We have simply this in the evidence, if your honor pleases, that she prepared those cash records, daily records which were reported once a month to Mr. Dulaigh. Has anybody pointed out to your honor where any single one of those was wrong or false, or that it was misstated in
326 any way? I say that there is no evidence against Mrs. Holland in that regard. In any case, I respectfully suggest to your honor that, if on nothing else, if the jury came in and found her guilty of those two counts in that indictment, your honor could not find it in his conscience to say that she was guilty of any crime in that respect. Now after all, we haven't gone that far in the trial of these cases.

I respectfully submit to your honor that the Government has failed in several material allegations of these indictments and the several counts therein. And for the reasons stated, I respectfully pray that your honor direct this jury either to acquit these defendants, or render judgment of acquittal under every count in this indictment. I do want to thank your honor for the fair and impartial way you have tried this case. I do want to thank your honor for the many courtesies that you have shown me and my associates in this case, and the defendants in this case. It's my first really big tax case. I have learned a lot, but in learning it I am grateful to you and the rest of the men in this case now. Thank you very much.

Argument by Mr. Chittim.

Mr. Chittim: If the court please, I want to first discuss several of the questions of law that have been raised in connection with the argument which has been made.

The Court: Well, now, perhaps we can save time. Be-

fore you discuss the questions of law, let's find out what the facts are in this case. As you claim they are. What do you think is the net worth of these defendants on January 1, 1946? That's at the beginning, isn't it?

327 Mr. Chittim: Yes.

The Court: Now what do you think there is in this record which shows their net worth and what do you think it is?

Mr. Chittim: If your honor please, I think that our evidence has established, when summarized, that the net worth of the Hollands at the beginning of the period January 1, 1946—May I check this, so I do not make any error?

The Court: Yes.

Mr. Chittim: I think our evidence, on the basis it has been tabulated, as it has been presented here, shows that his net worth on January 1, 1946, is $19,152.59.

The Court: All right. Now what do you say it was on January 1, 1947? What I want to find out is the state of this record on your net worth method. Now you develop that in your own way. I don't want to hurry you in the presentation of this matter at all, but I do want to get at the facts.

Mr. Chittim: All right. Our evidence we think has shown a net worth at the beginning of the period of $19,152.59. Now we think that our evidence will show for the year 1946 and increase in net worth of $54,863.09. And we think that our evidence as introduced here, when summarized, shows an increase in net worth for the year 1947 of $29,516.17. We also think that our evidence as presented here has shown a net increase for the year 1948 of $28,743.62.

328 The Court: Now, then, what is that evidence? What I want to hear is what is the evidence upon which you think you have established the net worth on January 1, 1946, of $19,152.59.

Mr. Chittim: All right. We think that evidence— will you state your question again?

The Court: I just want to know on what basis you have

computed the beginning net worth. What evidence is there in the record that that is the net worth?

Mr. Chittim: We have in the record that on January 1, 1946, the Hollands had balances in two bank accounts.

The Court: Yes.

Mr. Chittim: Of $2,153.09.

The Court: All right.

Mr. Chittim: We also have in the record at the beginning of the period seven hundred shares of Twentieth Century Fox common stock, costing $20,650.00 according to his income tax return. Three hundred shares of Midland Steel common, which cost him nine thousand dollars as per his return. Then with references to liabilities; that he was indebted to the Aussom Investment Company on a Judgment in the amount of $506.66; to the U. S. National Bank of Denver in the amount of $11,703.84; and to the New York Life Insurance Company in the amount of $440.00. And that is the basis of the net worth.

The Court: Now that's how you arrived at that?

Mr. Chittim: That is correct.

329 The Court: Do you have anything further?

Mr. Chittim: No, those are the items which have entered into making up that figure.

The Court: Now on what basis do you get these increases that you talk about? What makes up the '46 increase to $54,863.09?

Mr. Chittim: All right. During the year 1946 the bank account balances in the three banks had increased by $15,018.04. They had sold all of their common stock which had been acquired at a cost of $29,650.00—

The Court: Well they sold that, but where is the sale price reflected?

Mr. Chittim: That's in the return, your honor. Their income tax return.

The Court: All right. Where is the rest of the increase?

Mr. Chittim: He had purchased from Mr. DeLue the hotel property for the sum of $72,750.00, and the adjoining coffee shop for fifteen thousand dollars; that he purchased this property at 815 Thirteenth Street in Golden from Mr. Landry for the sum of ten thousand dollars; that he had purchased some lots from Mr. Larnett for the sum of three thousand dollars; and that he had additional investments during the year, according to his income tax return, of $3,904.56, in equipment; and a $1,300.00 inventory.

And on the liability side; that during the year there were outstanding checks which he had written during the year which were still outstanding, in the amount of $3,976.90; that by the end of the year he had decreased his indebtedness to the New York Life Insurance Company in the amount of $440.00; that he had increased his indebtedness to the U.S. National Bank in the amount of $13,296.16; that he had increased his indebtedness by a liability to Leonard DeLue in the amount of $10,000.00; that he had increased his indebtedness by liability to Fred Landry in the amount of four thousand dollars; that he had increased his liability to C. B. Larnett in the amount of $2,975.00; and that he was entitled to deduct depreciation in the amount of $2,651.45 as claimed in the income tax return for that year. And that was the basis on which the increase in net worth is figured.

330 The Court: That's for the year 1946?

Mr. Chittim: That is correct.

The Court: Now what is it for the year 1947?

Mr. Chittim: Item by item?

The Court: Yes.

Mr. Chittim: All right. They increased the balances in their bank accounts by $11,139.32; they increased their investments, as claimed by the 1947 income tax return, for depreciation purposes in the amount of $5,169.79 for equipment, and $2,909.50 for furniture and fixtures; $2,255.80 for improvements as shown in the schedule; $5,113.87 for furniture and fixtures, soft; that they increased their inventory, as claimed in their return, by the amount of $947.05; an investment of $1,000.00 in horses purchased from Mr.

Craig; an investment of $7,500.00 in the purchase of 1500 Ford Street, plus $1,669.93 additional improvements as claimed on the return; and a purchase of part of a lot from Mr. Waters for five hundred dollars.

331 Now on the liability side; that the total amount of outstanding checks which had been written and were uncashed increased in the amount of $4,858.92; that he was entitled to a depreciation of $5,095.00, claimed on the 1947 return; incurred a liability to the Golden Savings & Loan Company of $3,431.53; that the liability of the U. S. National Bank was reduced by $10,000.00; that the liability to Mr. DeLue was reduced by ten thousand dollars; that the liability to Fred Landry was reduced by $4,000.00, and that the liability to C. B. Larnett was reduced by $2,975.00; and that is the list of the liabilities which were taken into account.

The Court: For '47?

Mr. Chittim: For '47, yes, sir.

The Court: Now what about '48?

Mr. Chittim: That for the year '48 there was an increase in the balance in the bank accounts in the amount of $2,083.55; that there was an additional investment for depreciable assets, as claimed by the 1948 schedule, of $1,676.44 for equipment; $2,386.62 for furniture and fixtures, hard; for improvements, $1,322.28; $2,164.62 for furniture and fixtures, soft, also according to the return; $6,203.31 for improvements to the coffee shop; $3,205.75 for equipment in the coffee shop; $971.66 for furniture and fixtures, hard, for the coffee shop; $1,567.69 for furniture and fixtures, soft for the coffee shop; $815.00 for improvements at 815 Thirteenth Street, and $740.00 for im-
332 provements at 1500 Ford Street; and that there were unrecorded improvements which were not shown in the tax schedule, of $7,965.06, for the equipment purchased from the Southern Equipment Company; and an additional amount of $4,283.44 for equipment purchased from the Carson Hotel Supply Company; and that further, there was additional investment of $212.95 in inventory at the hotel and coffee shop as disclosed by the income tax return; that he made an additional investment of $1,742.24 in building

material for his barn and fence; that he purchased a hundred and sixty acres of land for six thousand dollars.

Now on the liability side; that the total amount of outstanding checks were reduced by the amount of $2,213.74; he was entitled to $6,858.23 for depreciation as claimed on the income tax return; and an additional amount of $974.99 for equipment purchased from the Southern Equipment Company and Carson Hotel Company; that he reduced his liability to the U. S. National Bank in the amount of fifteen thousand dollars; that he reduced his liability to the Golden Savings & Loan Company in the amount of $1,022.49; and an additionally incurred liability to T. C. Hitchings in the amount of $25,000.00. And that completes the liability side of that picture.

The Court: All right. One further question. What does the record show as the income of the taxpayer which he claims he had on each of these three years, for each year? Now the evidence of that is your income tax return, is that it?

333 Mr. Chittim: Yes, sir.

The Court: Well, by how much do you claim he understated his income? Do you have that figure?

Mr. Chittim: Yes. I'll have that in just one moment

The Court: The total understatement for the three year period. You don't need to break that down.

Mr. Chittim: My attention was just called to the fact that before the picture which I have given you is absolutely correct, there would have to be added to that certain undeductible expenditures.

The Court: Were those claimed on the return?

Mr. Chittim: No. They would be such things as your federal income tax payment and things of that sort, life insurance premiums.

The Court: Well tell me the final figures. By what amount do you claim the income was understated? Take your final figures.

Mr. Chittim: For each year?

The Court: No. Just for the total. If you've got it by each year, give it by each year. I am trying to make it as easy for you as possible. Whichever way you've got it. You've got a figure in the indictment, but now I want to know what the proof shows.

Mr. Chittim: It shows an increase over the figures reported for the year 1946 of $30,608.56. For the year '47, $27,632.74, and for the year 1948, $20,938.48.

334 The Court: All right.

Mr. Chittim: The position of the Government in this case is that we do have to establish his net income.

The Court: Now you don't need to talk to me about that. I know what you have to establish. What I want to know is, have you done it?

Now, Mr. Bruno, there is quite a lot of difference between this case and the cases to which you referred me. This man's defense is on the ground that he had a hundred and four thousand dollars in tens and twenties and hundred bills; that they were in a black canvas sack. He never had deposited that. He either had it in his black canvas sack or had it otherwise. And a good deal of the Government's evidence has been directed toward showing that that was not the fact. The evidence is circumstantial, as in these cases it must be necessarily. The Government can't call the defendant and ask him about it. The Government is forced to show circumstances with which the defendant's claim is just not consistent.

Now there are several of those circumstances. This man was having financial difficulties during a substantial part of the time in which he said he had the hundred and nine thousand or the hundred and four thousand dollars. It's inconceivable that he would be harrassed with financial difficulties had he had such a sum of money. He would have used it to pay them off. Judgments were obtained against him, which, after a while, when he gets into a more prosperous situation, he does pay off. Moreover, in the time when he was in financial difficulties, he wrote letters
335 in which he said, "If you force me to, I'll lose everything I have in the world, which is the money I have

invested in some cafe. That's everything I have in the world, and that I'll lose it." Now of course you people can argue to the jury that that's what he was saying to a creditor who was pressing him for payment, and to whom he did not desire to disclose that he had a hundred and four thousand dollars, if you want to. But it's the kind of admission that should go to the jury.

Really, what this case boils down to in its ultimate fundamentals is the question of whether Mr. and Mrs. Holland are telling us the truth when they say they had a hundred and four thousand dollars in tens and twenties and some hundred dollar bills, which they kept hidden away, and that when they found the Holland House over here and settled down, then they pulled that money out of hiding and began to spend it. They say that's what they did. The Government says that that's a fabrication. Now it seems to me that the evidence already is in conflict on that. As a matter of fact, you gentlemen who represent the defendants have drawn from the Government's own witnesses and from the statements that the Government's witnesses have read, which were made by Mr. and Mrs. Holland, some evidence in conflict with the Government's position. You developed part of your case I believe from the Government's witnesses in the statements of Mr. and Mrs. Holland which they made to those agents. It seems to me that this is a jury case.

Mr. Zarlengo: Your honor, may I have just about five minutes?

336 The Court: Yes, of course.

Mr. Zarlengo: Just one matter I would like to call to the court's attention because I think it strikes at the very root of this entire matter. And I believe that the very first question which your honor asked Mr. Chittim when he got up to make his argument, the first thing your honor asked him is, "what was the net worth of the Hollands on January 1, 1946?" And that's the cornerstone of this entire case.

The Court: Yes, that's right.

Mr. Zarlengo: It's incumbent upon them to prove, and to prove by clear evidence under these defendant cases, the Bryan case and the others, and I believe your honor that

they have failed to do that. Now he gave your honor a figure of nineteen thousand. I don't know how he arrived at that.

The Court: Well he told us he arrived at it by showing a bank account which contained $2,153.09, seven hundred shares of Fox Film. He doesn't take the market value on that. He takes the cost. On January 1, 1946, three hundred shares of Midland Steel, nine thousand dollars. That is on the asset side. $31,803.09. And then he says on the liability side the defendant was indebted to—I believe it's the Aussom Investment Company—$569.00, the U. S. National Bank, $11,384.00, New York Life, $440.00, or a total of $12,654.44. And the difference between those two figures is $19,152.65. I came out with a little difference. He has fifty-nine cents and I have sixty-five.

Mr. Zarlengo: Well I know that's what he stated, your honor. That's how he arrived at it, but in figuring
337 net worth on a certain day we never take the cost price of a stock. It's the market value of the stock on that particular day. Now he assumes that these stocks that he gave to your honor were the only stocks that were on hand that day, but I don't believe the evidence bears him out on that either. The testimony of Davis, of the U. S. National Bank, your honor, was that the list of stocks—and I have the list here,—had been pledged with the bank as his collateral on various loans. There was no testimony as to when these stocks were returned to these defendants, or what happened to them.

The Court: My recollection is that those bank loans were paid off and the securities released after the first of the year, 1946.

Mr. Zarlengo: There was some testimony in February of 1946, but how many of these shares were on hand January 1, 1946, as far as the bank is concerned?

The Court: Well, we lose record of those very shortly after the 1st of January, 1946, because the bank loans were paid off. Those were released and they disappear from the picture.

Mr. Zarlengo: Well, that's exactly, your honor, one of

the things, outside of the fact that they have never established the market value of these stocks, and, under the Fenwick case, the Circuit court held that they have got to establish the value. That goes into the net worth statement, and if they fail to do that—How much these stocks were worth, we don't know. Now it's true that the bank loans were paid February, 1946.

338 The Court: What is the evidence as to when the seven hundred shares of Fox and three hundred shares of Midland Steel were acquired?

Mr. Chittim: The income tax returns.

Mr. Zarlengo: Well, there is only one income tax return.

The Court: One at a time.

Mr. Zarlengo: There is only one income tax return, as I recall it, that shows the disposition of any stocks, and that was in 1946, your honor. There is nothing in '44, there is nothing in '45, and if these were sold in either one of those years there'd be something in the return. 1946 shows only a few stocks. And this is what they are relying on. That only shows a sale of Twentieth Century Fox Corporation stock.

The Court: For how much.

Mr. Zarlengo: These were sold for $26,327.72.

The Court: Well that takes care of your value at the beginning of the net worth period then.

Mr. Zarlengo: Well your honor, this is my point. This shows only two stocks that were sold, and yet the bank states that there were about twenty stocks, Sinclair Oil, Commonwealth and Southern, United Gas, five hundred shares, and so forth. There is a lot of Columbia Broadcasting. There is nothing in this record to show that any of these stocks were sold before January 1, 1946. Nothing. It does show that Twentieth Century Fox and Midland Steel were sold in February of 1946. Therefore, according to the evidence, the only inference we can draw is that all of these stocks were on hand January 1, 1946. Two
339 of them were sold in February, but that has nothing

to do with the financial statement of January 1, 1946. The others were on hand and there is no evidence of the value of these forty-eight hundred and fifty shares with the U. S. National Bank, nor is there any testimony on these seven hundred shares that were pledged with these other banks.

The Court: Well tell me what the return shows as the sale price of the Midland Steel three hundred shares.

Mr. Zarlengo: It shows here, your honor, but I am not sure I have the right figures. It shows the total, as I read it, on those two stocks—

The Court: Which two?

Mr. Zarlengo: Midland and Twentieth Century Fox.

The Court: Are there two sales of Midland?

Mr. Zarlengo: Yes, sir. Two sales on each one. Two on Twentieth Century Fox, two on Midland.

The Court: There is no total?

Mr. Zarlengo: No total, but it shows each sale. The two sales on Fox—the first sale was fifteen thousand dollars, the second sale five thousand six hundred fifty. The sale price on Twentieth Century Fox was $26,327.72. The second sale on Twentieth Century Fox was $10,578.16. The first sale on Midland was $4,114.51. The second sale, $10,129.39. Now I mentioned first and second sales, but they were all on the same date—2/2/46. But those are the only stocks that were sold, according to any of these returns, and they have offered them here for several years. There were none sold in '44, '45, and there are no other returns before the court, and there is no evidence that any other of these stocks were sold, and there is no evidence at all of value.

340 The Court: Well, there is some evidence of value because in February, where the beginning of the period was January, '46, and not longer than two months later, you have these sales. Now the court can infer forward and back from a transaction. We can infer that these stocks had a value approximately that amount.

Mr. Zarlengo: That is, these that were sold. But how about the others? What evidence is there of the value of Southern Pacific common on January 1, '46?

The Court: Well all you have in this record is that at one time he had those other shares pledged to the U. S. National Bank, and you have the evidence in this record that shortly after the first of the year, 1946, he paid off the U. S. National Bank and secured his release. Now I think that's about the size of the record.

Mr. Zarlengo: Well that's exactly where they fall down, because you see, your honor, because these other stocks— Now for the moment I am forgetting the cash on hand, but if these other stocks were worth the amount claimed we're short, then under all the authorities they have no case at all.

The Court: You haven't shown that.

Mr. Zarlengo: I know, but this is on their side of the case, Judge.

341 The Court: You don't have to argue that. The whole question before me is not whether the Government has produced evidence here which satisfies me beyond a reasonable doubt. The only question here is whether they have submitted evidence which would in my judgment satisfy a jury beyond a reasonable doubt. The question here is whether the Government has presented evidence from which a jury might reasonably find that Mr. and Mrs. Holland did not have that hundred and four thousand dollars in cash as they claim.

Mr. Bruno: They must further find something else, Judge Ritter, that a tax is due and owing. Now have you heard any testimony on what is owing?

The Court: Now that is not an evidentiary matter We take these facts and we make a computation. I can make that computation. You can make that computation. Mr. Chittim can make that computation. What the Government has done here, I think, is that it has presented enough evidence from which a jury might reasonably find that Mr. and Mrs. Holland didn't have that sum of money that they say they had, and from which a jury might reasonably

find that the net worth at the beginning of the period was $19,152.59, and the net worth at the end of the period some other figure.

On the basis of the evidence here, the Government claims there was an understatement of taxable income in 1946 of some thirty thousand dollars; in '47, some twenty-seven thousand; in '48, the sum of twenty thousand. Now I didn't interrupt you when you made your argument on the law, when you said that the Government must produce
342 evidence which excludes every other reasonable assumption. Now that isn't so at this juncture. All the Government needs to do to avert granting of this motion is to introduce enough evidence which I believe is such that from it a jury might reasonably find in favor of the Government. I don't mean to suggest that they ought or should. I just mean to say that the evidence is in such shape that the jury might reasonably find the issues here in favor of the Government and against the defendants.

You don't have to, at this juncture, exclude every other reasonably hypothesis. I am not passing on that. Maybe you have enough here from which a jury might reasonably find in favor of the defendant. All I have to decide on this motion is whether there is enough evidence that a jury might reasonably find for the Government. You don't have to exclude every other reasonable hypothesis. The Government doesn't have to close every conceivable rat-hole.

Mr. Bruno: That's what the court said in the Bryan case.

The Court: Well, I don't think that Bryan case is in point. I don't think so for the reason that the defendant in this case is taking the position that he did have one hundred four thousand dollars hidden away. I said that he had it hidden away. Now whether that's true or it isn't, I don't know. Much of the Government's evidence is directed to the point that what he says now about having that amount of money is not consistent with a whole lot of circumstances up through that period of years.

343 Mr. Bruno: May I point out one other thing to your honor. The Government has precluded Mr. Bodley as a man that can be believed when they put him on the

stand. Mr. Bodley testified that the net worth of these people was a hundred seventy-five or a hundred seventy-six thousand dollars.

The Court: When?

Mr. Bruno: On January 1, 1946. It's right in that statement. They are bound by that. Now if you add all of the things that they say these people had, and withheld it from, you'll find that it doesn't come up to the one hundred seventy-six or one hundred seventy-five thousand dollars, or anywhere near it.

The Court: Well, I don't so understand the testimony of the witness Bodley. I don't understand that the Government has gotten itself into a position where it makes inconsistent claims about what his net worth was in this period.

Mr. Zarlengo: If the court please, on that point I raised a minute ago, I can read that portion—U. S. against Fenwick—

The Court: Our circuit?

Mr. Zarlengo: No, I don't believe it is, your honor. It's Seventh Circuit. It definitely states that they have got to establish that as the cornerstone of their case.

The Court: Well of course you don't have to figure it out to a gnat's heel. You don't have an exact dollar and cents amount that they are stuck with. If they show that there was a willful attempt to defeat and evade the tax by ten dollars in each of those years, that's enough.

344 Mr. Zarlengo: My point is they haven't shown that. The court says that must be a substantial amount.

The Court: Well, I think there is a substantial amount. I am prepared to rule. I won't take this case from the jury. I think it would be a miscarriage of justice if the court would decide questions of fact where there is a question of the credibility of witnesses involved, the question of the credibility of the statements of these people, the agents, a question of the weight of a good deal of that cir-

cumstantial evidence, and whether the inferences from those circumstances and evidence are reasonable.

I believe that the Government has made a prima facie case. I believe that the Government has produced evidence here which, if the jury believes it, the jury is entitled to conclude from it reasonably that the defendants haven't told the truth about where they got the money. I think the jury reasonably might believe that these defendants took the money from current gross receipts in the business and didn't report it. That's a jury question in my judgment. The motion will be denied.

Mr. Bruno: Does your honor's order go to Mrs. Holland's second indictment?

The Court: I'm glad you called my attention to that. The evidence on that is from their own bookkeeper; that it was Mrs. Holland who prepared those daily sheets of receipts and handed them to the bookkeeper, from which the returns were made up. Now if Mrs. Holland did that, under all of the facts and circumstances of the case the jury can believe that she knew what was going on. I believe that's a jury question. I think we should submit that question to the jury too.

345 Now, then, I have a little more doubt about Mrs. Holland. If that bookkeeper hadn't testified this morning that it was Mrs. Holland who prepared those daily sheets, showing the daily receipts; it was Mrs. Holland who told him that that was what they got every day, I don't think I would have allowed the indictment against Mrs. Holland to go to the jury. But with that additional factor in the case, I think I shall.

When your case is concluded, will you renew your motion, and perhaps for further clarification of that I'll take Mrs. Holland's motion under advisement and reserve a ruling. At this point I'm going to deny the motion.

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346 CHRISTIAN D. STONER, a witness for the defendants, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Zarlengo.

Q. State your name please.—A. Christian D. Stoner.

Q. Where do you live?—A. In Edgewater, Colorado.

Q. What is your occupation?—A. I am district judge, of the First Judicial District.

Q. And what counties does that comprise?—A. Jefferson, Arapahoe, and Adams.

Q. How long have you been district judge of those counties?—A. A little over two years. Prior to that, I was county judge.

Q. And you served as county judge of what county?—A. Jefferson County.

Q. How long were you County Judge there?—A. Ten years.

Q. How long have you been a resident of Jefferson County?—A. Since 1933.

Q. And you have been a member of the Bar of the State of Colorado for how many years, Judge?—A. Took it on February 1st, 1927.

Q. Are you acquainted with the defendants here, Mr. and Mrs. Holland?—A. I am.

347 Q. How long have you known them?—A. About eight years.

Q. What is the nature of your acquaintance with them?—A. I have seen Mr. and Mrs. Holland on the average of two or three times a week.

Q. Judge, are you acquainted with their general reputation in the community in which they reside for honesty and integrity?—A. I am.

Q. Is that good or bad?—A. Very, very good.

Mr. Chittim: No questions.

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Orville L. Dennis, a witness for the defendants, came to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Zarlengo.

Q. State your name.—A. Orville L. Dennis.

Q. Where do you live Mr. Dennis?—A. Golden, Colorado.

Q. How long have you been a resident of Golden?—A. Well, I was born in Golden.

Q. Lived there all of your life?—A. Well I've been away from there several times—served some time in the army; came back; and left again. Came back in 1938.

348 Been there ever since.

Q. So you have been a resident of Golden for most of your life?—A. That's right.

Q. What is your occupation?—A. Well I have several. I'm president of the Golden Savings & Loan Association, and I have a real estate and insurance office. Director in a holding company.

Q. Have you ever held any position in any law enforcement agency?—A. Yes, sir.

Q. What position have you held, Mr. Dennis?—A. Several. I was appointed Under-Sheriff of Jefferson County before I was twenty one. Had to wait twenty-seven days. Then I served a year as Acting Sheriff of Jefferson County. And I served some time in the Provost Marshal's General Department in Europe. And coming back here, I was Captain of the Colorado Rangers all the time they were in existence—in command.

Q. Now, Mr. Dennis, are you acquainted with the two defendants, Mr. and Mrs. Holland?—A. I am.

Q. How long have you known them?—A. Ever since they've been in Golden—about eight years.

Q. Are you acquainted with their general reputation in the community in which they reside for being peaceful, and as to their honesty and integrity?—A. I am.

349 Q. What is that? What is that reputation?—A. Very good.

Mr. Zarlengo: You may enquire.

Cross Examination by Mr. Vigil.

Q. As a matter of fact, Mr. Dennis, isn't it true that you do business with the defendants, and you do a considerable bit of business with them, do you not?—A. That's right.

Q. And you sell a lot of insurance to them?—A. Yes.

Q. And very recently you have sold them quite a large policy?—A. Well, not large. The average, for the type of business.

Q. Well it amounts to a hundred thousand dollars, or so?—A. No.

Q. How much does it amount to?—A. Oh, it will run probably four or five hundred dollars a year premium. The coverage of their liability policy, I think, is the maximum. A hundred thousand.

Q. Public liability?—A. Yes.

Q. Automobile accident?—A. No, liability on their hotel. In other words, if somebody slips on the sidewalk and gets hurt, this covers them.

Q. Does that also cover burglary?—A. Yes, sir. Not that particular policy, but he is covered for burglary.

350 Q. Do you have another policy?—A. Five thousand on safe burglary, hold-up, and safe robbery.

Q. How much is that?—A. Well, it's thirty-five hundred on messenger hold-up, two thousand on hold-up within the interior of the building, and five thousand safe.

Q. That's what it is now?—A. Yes.

Q. Was it larger previously?—A. No, that's been the same all the time.

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JOHN C. VIVIAN, a witness for the defendants, was called to the stand, and having been duly sworn, testified as follows:

Direct Examination by Mr. Zarlengo.

Q. Will you state your name please?—A. John C. Vivian.

Q. Where do you live, Mr. Vivian?—A. I live in Golden, Rural Route Number 4.

Q. How long have you lived in Golden?—A. I was born in Golden.

Q. And have you been a resident there all of your life?—A. I have.

Q. Are you a member of the Bar of the State of
351 Colorado?—A. Yes.

Q. How many years have you practiced in this state?—A. About forty years.

Q. Forty years?—A. Yes, sir.

Q. Have you held any official positions?—A. Yes.

Q. Will you tell the jury what positions you held?—A. Well I was City Attorney of Golden for a number of years, County Attorney of Jefferson County, Assistant Attorney General of Colorado. I was Lieutenant Governor for two terms and Governor for two terms.

Q. Are you acquainted with the defendants here, Mr. and Mrs. Holland?—A. I am.

Q. How many years have you known them, Governor?—A. Well, I've known Mr. Holland perhaps thirty years, and I've known Mrs. Holland since they moved to Golden, I think in 1945.

Q. Are you acquainted with their general reputation in the community in which they reside for honesty and integrity?—A. I am.

Q. Now will you tell the Jury whether that is good or bad?—A. It's excellent.

Mr. Zarlengo: You may examine.

Cross Examination by Mr. Vigil.

352 Q. Governor, were you acquainted with Mr. Holland about 1930?—A. Speak just as loudly as you can. I have a cold in my head. Don't hear so well.

Q. Were you acquainted with Mr. Holland about 1930? About 1930, were you acquainted with him?—A. I didn't get your question.

Q. Were you acquainted with Mr. Holland about 1930? —A. I would say it's about that long, yes.

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Mr. Bruno: The defendants rest, your honor. If your honor please, before we rest, at this time I would like to renew the several motions that we made at the beginning and at the end of the Government's case. And may the record show that?

The Court: I'll give you an opportunity to do that. Of course you say "before you rest." I understand you have rested.

Mr. Bruno: We'd like to withdraw that, your honor, for the purpose of renewing thes motions.

The Court: All right. You may do so.

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353 Mr. Zarlengo: If the court please, at this time the defendants and each of them wish to renew the motions that they made at the conclusion of the Government's case for judgments of acquittal to each of the defendants, for the same reasons and on the same grounds that we urged your honor at the time we argued the matter at the close of their case. And as I state, I don't want to repeat these matters your honor, but we feel most strongly that they have not established their case, and I again mention the fact that in regard to Mrs. Holland, I don't believe they have any evidence whatsoever except that she turned over some daily sheets to the accountant; no evidence that those sheets were false, or anything of that kind. The books were turned over to the Government's Agents. They had every opportunity to examine them. And we feel that they have wholly failed to make out a case as to her, and for the grounds stated before, we think they failed to make out a case as to either of them.

The Court: Well, the motion as to Marion L. Holland is denied. The motion as to his wife, Ethel E. Holland, I shall reserve my ruling on until the verdict comes in, as I may under the rule. I should feel no difficulty about that at all except for the character of the statement that she turned over to the bookkeeper those daily papers. The fact that she turned over some papers ordinarily wouldn't have much significance, but the whole theory of this case is that there has been an understatement of gross receipts for the years in question, and the unfortunate thing from Mrs.
354 Holland's point of view is that the daily records of gross receipts were the very matters she turned over. So I'll reserve a ruling on that after you people argue the evidence to the jury. I shall perhaps know more about it then. Is there anything further? You want to rest now, I assume?

Mr. Zarlengo: Yes, we rest, your honor.

The Court: Do you have anything further?

Mr. Vigil: The Government also rests, your honor.

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Mr. Bruno: Now, just a moment. If your honor pleases, I'm going to object to this. No charts were admitted
355 in evidence. Nothing of any kind. And I now object to anything else except what's in evidence in this case.

Mr. Vigil: If the court please, I think it's exactly the basis that you ruled on at the beginning of the case.

The Court: What is this?

Mr. Vigil: This is a chart that I'm going to use for purposes of argument.

The Court: Well, now, is the information which is on this chart based on the evidence?

Mr. Vigil: I think it is, your honor. I have tried my best to make it so.

The Court: In other words, instead of writing on the blackboard what you think the figures are as disclosed by the evidence, you're pinning up to the blackboard a previously prepared document on which to make the same kind of entries?

Mr. Vigil: Exactly, and it's exactly the same as used in the opening statements by counsel for defendants.

Mr. Bruno: Now I'll point out to your honor that nobody has testified in this case that what appears in there is what we have in this evidence in this record, and I object to it and I object to it very strenuously.

The Court: Well if you can point out to me, Mr. Bruno, anything that's on this chart that isn't in evidence, of course I'll sustain your objection.

Mr. Bruno: I haven't seen it.

The Court: Why don't you take a look at it?

356 Mr. Zarlengo: Your honor, that is going to take considerable time to check all these figures. They

come in here this morning for the first time and hang up a number of charts on the blackboard.

The Court: Well they do so with the representation to the court, which is pretty serious representation, that all they've got there is what they have placed in evidence.

Mr. Vigil: That's right.

The Court: Now I'm not going to disregard that representation lightly because I don't believe it was lightly made.

Mr. Zarlengo: Well if the court please, they have put down the names of witnesses, attempting apparently to summarize the evidence here with a chart on the blackboard, and we want to have this record show that we object to that as highly improper.

The Court: Well, the only thing they are going to do is give counsel an opportunity to talk from that as to figures which they might write on the blackboard, which is ordinary and usual procedure. If this chart has on it only the kind of matters that out of the memory of counsel he might bring up there; if he wants to, for illustration purposes, I see no prejudice in it.

Mr. Bruno: If your honor pleases, in their opening statements they said that one of the things they had to prove was the net worth on January 1, 1946. I don't see anywhere on this chart—

The Court: They don't have to put everything on the
357 chart. First you fellows object that they've got it up there. Now you object that they haven't got it all.

Mr. Zarlengo: As I say, there is a mass of figures here. We wouldn't have time to check it on such short notice.

The Court: Of course he is going to have to confine himself, and so are you, in your summations to the jury in matters that are in evidence here. And that's just a convenience, as a blackboard is a convenience. If he talks about anything that isn't in evidence, I'm going to stop him. And I'm going to do the same thing if you folks talk about anything that isn't in evidence.

Now, may we understand that you people are willing to

go forward without having submitted the requests for instructions to me without having my indication as to what I propose to do with them?

Mr. Bruno: Yes.

The Court: I'll say to you that I'll give the usual instructions as in cases of this kind. I shall leave the issues of fact and the credibility of the witnesses to this jury. I'll not comment upon the evidence except perhaps as I state an issue, it may be necessary to explain the issue. The charge I shall give will take less than fifteen minutes. It will not be detailed. I am going to leave the issues generally to the jury. I think the questions here are jury questions, as I stated yesterday. Well, with that understanding, you may proceed. As I understand, you gentlemen are willing to proceed without knowingly what I am going to do with the requests. You haven't given me any requests, so I
358 can't tell you what I'm going to do with them. So go ahead. Each side has an hour. You may divide the time any way you please.

Mr. Vigil: If the court please, may I ask, by stipulation with Mr. Zarlengo, that the Government be permitted to substitute a photostatic copy for Exhibit L, the original of which is the card of the bank.

Mr. Zarlengo: We have no objections to their substituting a photostatic copy, your honor.

The Court: That may be done.

Whereupon Mr. Chittim made his Argument to the Jury

Mr. Bruno: If your honor pleases, I'd like to have the record show that we are making the same objection to a second chart which has been placed up on the board here, and which we have seen for the very first time right now. The same objection will be made as before.

The Court: Is that information on the chart that has been pinned on the blackboard based upon the evidence?

Mr. Vigil: The first one was. This is beginning with that and shows the method by which we tabulated the taxes—

Mr. Bruno: Well we certainly object to that. Now they

are going into some methods they have used. We have no opportunity to cross examine anybody on the accuracy of the method.

The Court: You have the same opportunity they have. What they are doing now is in the statute books and the income tax laws and the regulations. Now on the basis of the data which is in evidence they are entitled to make
359 their computation of taxes, which is just arithmatical computation based on evidence and the law applied to them. You people can do the same thing, and if you have any doubt as to the accuracy—

Mr. Bruno: Well if it please the court we renew our objection. As I understand it, from the statement made by the district attorney, this is some type of a calculation that they have made. What the method is, I don't know.

The Court: Well maybe that will appear when they explain it.

Mr. Zarlengo: We have no opportunity to cross examine anybody as to the method that they have used.

The Court: Well you're not entitled to cross examine on the law. This is an application of the law to the evidence.

Mr. Bruno: I don't see anything on there pertaining to any law. They have here again the same as it was before. Witnesses. They don't refer to any statutes, don't refer to any law at all. Simply a number of summaries that they've worked out here and put up on this board.

The Court: Objection will be overruled. You may proceed.

Whereupon Counsel for the Government continued his Argument to the Jury.

Mr. Bruno: If the court please, at this time we wish to enter an objection to the third chart that has now been placed upon the board, and which we have seen just for the first time, which purports to set out certain years and exemptions, credit of dependents, and so forth. Now
360 there has been no testimony on that whatsoever. They put on a so-called expert here who attempted to give

some testimony with regard to that matter. Your honor sustained the objections that were made. We object to this because it's highly prejudicial to have that up on the board before the jury unless the facts are before the jury. There are many things that have to be taken into consideration before we can determine any taxes due for any particular year. A man may have an income of many thousands of dollars and yet no tax would be due. But they are trying to create the impression by this chart that if you have income over a certain amount than then a tax is due during any particular period, and that is not the fact. And we therefore object to this chart being exhibited here before the jury as highly prejudicial in this case because they do not have any facts as to what taxes, securities, or other income came in during those years. What the law was with regard to capital gains that were not taxable, and so forth. Now there is no fact here as to how much income we may have had that didn't have to be reported. That chart is highly prejudicial.

The Court: Do you have a small copy of that chart that I can look at? I can't see that one on the board.

Whereupon the Court examined the chart.

The Court: What this purports to be is a recapitulation of the provisions of the income tax laws only. In the first column are the years, in the second and third columns are figure requirements under the provisions of the law; that is to say, for a single person and a married person,
361 and the next one is a personal exemption under the law pertaining to a married person. The next column is credit for dependents as provided by law, and the last column, they give you the references to the various Revenue Acts. So it would appear, Mr. Zarlengo, that what this chart contains is a summary of the provisions of the income tax laws. And of course counsel can argue that to the jury.

Objection will be overruled. You may proceed.

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362 The Court: Ladies and Gentlemen of the Jury, the attorneys for the Government and for the defense

made opening statements to you at the commencement of this trial, and this morning they summed up their respective views as to what the evidence shows.

Now Ladies and Gentlemen of the Jury, at the outset I want to say to you that nothing that counsel have said on behalf of the Government, and nothing that counsel have said on behalf of these defendants is evidence in this case. That is just their views, and their claims and their argument about their respective positions. Now I feel compelled to say to you, Ladies and Gentlemen of the Jury, that you are totally to ignore and disregard, and lay out of this case and your consideration of it, any appeals to your passions or to your prejudices. I say I am compelled to tell you that for it is my duty not to sit idly by here and disregard such appeals.

When I interrogated you, Ladies and Gentlemen of the Jury, the first day of this trial, I asked you about certain matters, and I asked each and every one of you individually and collectively whether there was any matter in your minds about which you entertained any bias or prejudice of any nature whatsoever. And I asked you if there was any reason why any one of you thought that you could not fairly and impartially try this case. And at that time I charged you, so that you might search your own consciences,
363 that if you were selected on this jury it would be your duty and obligation under your oath to consider this case and the issues in it, and to arrive at your verdict upon the basis of the evidence and the form of the testimony which comes from the mouths of the witnesses, and in the form of exhibits which might be received in evidence here by the court.

There have been some appeals made to you on the basis of passion; on the basis of prejudice. There have been some charges made against the dutiful servants of the nation that I charge you with the duty of disregarding in their entirety. Now, Ladies and Gentlemen of the Jury, the internal revenue laws were enacted by Congress, composed entirely of your senators and your representatives. Those laws represent the law of this land. They bind me, and they bind you, and they bind all of us who are citizens and residents of this

land. Now any considerations as to their wisdom have long since been passed upon by Congress, and it is no part of your duty here; indeed it is outside your duty, and in violation of your obligation here, to take into consideration whether you think the tax laws of this nation are wise or unwise, provident or improvident. They are the law of the land and we are all bound by them.

Now there is not one small particle of evidence in this record that there has been any wrong-doing on the part of any of the agents of the Government. None was
364 offered, and had it been offered we would not have received it because those matters are outside of the issues which it is your duty to try here.

Ladies and Gentlemen of the Jury, you are here to try the issues raised by the indictment in this case, and by the pleas of the defendants. A Grand Jury called to attend this court has returned an indictment against Marion L. Holland and Ethel E. Holland in three counts; the first count of that indictment reads "that the Grand Jury charges that on or about the 15th day of March, 1947, in the district of Colorado, Marion L. Holland, late of Golden, State and District of Colorado, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America, for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Colorado at Denver, Colorado, a false and fraudulent income tax return, wherein he stated that his net income for said calendar year was the sum of $15,336.93, and that the amount of the tax due and owing thereon was the sum of $3,980.39; whereas he then and there well knew his net income for said calendar year was the sum of $38,471.03, upon which said net income he owed the United States of America an income tax of $15,688.75, in violation of Section 145-B Internal Revenue Code, Title 46, U. S. Code."

In count 2, the Grand Jury charges that on or about the 12th day of March, 1948, in the district of Colorado, Marion L. Holland, late of Golden, State and District of Col-
365 orado, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing

by him to the United States of America for the year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection Division of Colorado, at Denver, Colorado, a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of $5,771.57, and that the amount of tax due and owing thereon was the sum of $851.74, whereas he then and there well knew his net income for said calendar year was the sum of $34,641.97 from which net income he owed to the United States of America an income tax of $13,846.99." Now you will observe, Ladies and Gentlemen of the Jury, that only Mr. Holland is charged with those two counts.

In Count 3, the Grand Jury charges " that on or about the 12th day of March, 1949, in the District of Colorado, Marion L. Holland and Ethel E. Holland, late of Golden, State and District of Colorado, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by them to the United States of America for the calendar year 1948, by filing and causing to be filed with the Collector of Internal Revenue, for the Internal Revenue Collection District of Colorado, at Denver, Colorado, a false and fraudulent joint income tax return, wherein they stated that their net income for said calendar year was the sum of $10,211.42,
366 and that the amount of tax due and owing thereon was the sum of $1,532.52, whereas they then and there well knew their net income for said calendar year was the sum of $29,948.16, upon which net income they owed to the United States of America an income tax of $7,518.88, in violation of the sections of the code.

Now, Ladies and Gentlemen of the Jury, the Grand Jury returned another indictment against Mrs. Holland, and in that indictment the Grand Jury charges in two counts, first, that on or about the 15th day of March, 1947, and prior thereto, in the State and District of Colorado, Ethel E. Holland, late of Golden, in the State and District of Colorado, did wilfully and knowingly aid and assist in, and counsel, and procure, and advise the preparation and presentation to the Collector of Internal Revenue, for the Internal Revenue Collection District of Colorado, Denver, Colorado, a false and fraudulent income tax return of Marion L. Hol-

land for the calendar year 1946, followed by statements as to the amount, as I have already noted. In Count 2, the Grand Jury charges that on or about the 12th day of March, 1948, and prior thereto, in the State and District of Colorado, Ethel E. Holland, late of Golden, State and District of Colorado, did wilfully and knowingly aid and assist in and counsel, procure, and advise in the preparation and presentation to the Collector of Internal Revenue for the Internal Revenue Collection District of Colorado, at Denver, a false and fraudulent income tax return of Marion L. Holland for
367 the calendar year 1947, with amounts of income tax as I have already noted for you.

Now after those indictments were filed here in this court, Ladies and Gentlemen of the Jury, the defendants were given an opportunity to come here and enter their pleas; and by that, I mean these defendants were given an opportunity to say here in court whether they were guilty or not guilty of the offenses charged by the Grand Jury. Both of them came here and entered their pleas of "not guilty." In that state of the record, Ladies and Gentlemen of the Jury, every material, essential element of the crimes charged by the Grand Jury is placed in issue, and it becomes the burden of the United States of America to produce evidence which you believe and which satisfies your minds beyond a reasonable doubt of the existence of every one of those material and essential elements of the crimes charged by the Grand Jury. If the Government fails in that, it is your duty to acquit them.

On the other hand, if the Government has produced evidence which you believe satisfies your minds beyond a reasonable doubt of the existence of these elements of the offenses, it is your duty to bring in a verdict of "guilty" against these defendants.

Now, Ladies and Gentlemen of the Jury, this is not an easy case for you to understand. In the first place, this is a complicated collection of figures, and it is a complicated collection of documents; and the Government is proceeding upon a theory with which I expect no one of you had any familiarity when you came here. So in order that you
368 might understand the issues which it is your duty to

decide, I am going to tell you what the Government claims, and I am going to tell you what the Defendants claim; and out of those respective claims the issues unfold which it will be your duty to decide.

Now the Government claims, Ladies and Gentlemen of the Jury, that Mr. and Mrs. Holland acquired a business over in Golden, which I believe is called the "Holland House." As you know, I am unfamiliar with this part of the country. The Government claims that almost at once, under the operation and management of Mr. Holland, the Holland House began to make a good deal of money. Now the Government claims that Mr. and Mrs. Holland, as the Grand Jury charges, did not report on their Federal Income Tax Returns for the year 1946, and the year 1947, and the year 1948, all of the income from that business which it was their duty to report. Now the Government has not produced here any direct evidence as to the sum of money which was taken in and which was not reported. In the nature of cases of this kind, Ladies and Gentlemen of the Jury, that sort of evidence cannot be obtained.

Now, Ladies and Gentlemen of the Jury, the Government has produced evidence here that on January 1, 1946, Mr. and Mrs. Holland had certain property, of a value with respect to which the Government has presented evidence. And the Government says that at that time they had a net worth of some nineteen thousand dollars. The Government
369 says that three years later—this is their claim, you know—the Government says that at the end of 1946 their net worth was increased, and again at the end of 1947 that their net worth was further increased, and again at the end of 1948 their net worth was again increased. And the Government says it is reasonable to infer that the increase in the property that they owned, and in the value of it, is attributable and were the result of purchases from receipts earned in the taxable years in question from that business.

Now, Ladies and Gentlemen of the Jury, that is the Government's claim, and by stating it to you I do not wish you to understand that it is anything more than a claim. These indictments of the Grand Jury are not evidence. They just represent what the Government claims. They are not to be

understood by you as evidence at all. The fact that a Grand Jury of the United States has seen fit to bring these charges against these defendants is not to be considered by you in any sense as indicating their guilt. This is just a charge, and in stating to you what the Government claims here, I am just attempting to tell you what the respective claims of the parties are so that you may understand what it is that you're to do; and in making a claim, nothing that the attorneys for the Government said, and nothing that I say, should be regarded by you as evidence, nor taken by you as an indication of what my thought is about this evidence, because I am not going to tell you that.

370 I believe in the jury system, and I think there are some jury questions here, and I am going to submit those questions to the jury; but before I do, I am going to try and explain to you what those questions are; what it is your job to do.

Now the defendant comes here and he claims through his counsel, first, that if he bought any property in '46, '47, and '48, he didn't pay for it out of any receipts from the business he is operating; that he paid for it out of the cash reserve of a hundred and four thousand, or a hundred and thirteen thousand dollars, which at different times it has been stated in here he had. He claims that he didn't accumulate that money after he bought the Holland House, nor in the taxable years in question here. He says he didn't get it from that source, and he denies that he failed to report all the earnings from that business. He says he had a hundred and four, or a hundred and thirteen thousand dollars, in ten dollar bills, and twenty dollar bills, and some hundred dollar bills. He says he kept that for years. He said he had that accumulated by 1933; that he kept it intact and didn't spend it from 1933 until 1946, and he says "Sure, my net worth increased at the end of '46, certainly increased further at the end of '47" and he said "Of course it increased more still by the end of 1948." But he said it increased by reason of the fact that "I have reached into that black canvas bag" or his safety deposit box, or whatever else he kept it in, and he says, "I have bought these properties and increased my net worth, as you say,
371 by buying the property with that money, and not

with money earned and unreported in the tax years in question."

Now, Ladies and Gentlemen of the Jury, as I have said to you, the United States Government does not produce any direct evidence that Mr. and Mrs. Holland took profits out of the business, which they didn't report, and bought this property with. But what the United States Government does is to bring before you, Ladies and Gentlemen of the Jury, in this court, some circumstantial evidence, and it become important for me to tell you about that.

What is the nature of circumstantial evidence? It is your province, Ladies and Gentlemen of the Jury, in resolving these issues to determine what evidence you will believe, and what you think it proves to your satisfaction, beyond a reasonable doubt. You may, in arriving at your conclusions, look at the facts which are in proof in this record. And you may do something more than that. You may, Ladies and Gentlemen, a good cross section of the citizenry of this state, use your common sense and your intelligence, and you may ask yourselves what inferences reasonably may be drawn from the circumstances which you think are established by this proof. That's what we mean by circumstantial evidence. You may look at the facts, and you may in addition draw such inferences as you, Ladies and Gentlemen of the Jury, think are reasonable in view of all of the facts and circumstances in evidence here before you.

Now, for example, to illustrate what I mean, and
372 not in any sense to indicate the court's views about this evidence, or any other evidence in the record, and bearing in mind my admonition to you that the matters of fact in this case are for you to determine, and it is for you to determine and it is your province and not mine to decide those issues of fact and to determine the credibility of the witnesses in this case: whom you will believe and what you will believe. Now having that in mind, Ladies and Gentlemen of the Jury, I want to illustrate from the evidence in this case what I mean by circumstantial evidence. There is evidence in this case that Mr. Holland was an expert, that he is an expert at financial matters. There is evidence in this case that he is an expert in the market, and by the

market, I mean the grain market and I mean the New York stock market. I think there is evidence in this case to that effect, and I am simply reciting the evidence and not indicating any opinion of my own about it.

Now, Ladies and Gentlemen of the Jury, that fact is in evidence from the defendant, and the defendant's counsel ask you to draw an inference from it. They say it is reasonable to infer from the fact that he is such an expert, and experienced, and successful in the kind of operations of which they have given the evidence, and therefore they ask you to draw the inference and say that is reasonable, and he may have accumulated a hundred and four thousand or a hundred and thirteen thousand dollars, which he had by 1933, and which he kept intact and didn't begin to spend until 1946.

373 Now you may have observed in Mr. Vigil's argument to you, the Government takes that very same fact and asks you to draw a different inference from it, together with some other facts which the Government claims to have established to your satisfaction. The Government says it is in proof that Mr. Holland was an expert; that he was experienced in market matters; that he was successful, eminently successful, and the Government says if he had that hundred and four thousand dollars in 1933 it is permissible for you Ladies and Gentlemen of the Jury to infer, and it is reasonable to infer, that he wouldn't have kept it until 1946 but that he would have bought, because he is an expert in these matters, stocks and property and so forth at the lows of the depression. So the Government says you Ladies and Gentlemen of the Jury are entitled to infer if you want to, and if you think the inference reasonable, that Mr. Holland, if he had that money in 1933, wouldn't have kept it through the time of a great bargain counter, but that he would have made his investments. So it ends up with a claim in '46 that he had a hundred and four or a hundred and thirteen thousand dollars. And the Government says that it is a reasonable inference that, it is referred to as a highly improbable thing that he did.

You see this is a complicated case, Ladies and Gentlemen of the Jury, because there is a little bit of circumstantial

evidence here, and a little bit of circumstantial evidence over there, and it's going to be your duty, Ladies and
374 Gentlemen of the Jury to arrive at your verdict on the basis of the facts proven to your satisfaction beyond a reasonable doubt, and also on the basis of the inferences which reasonably may be drawn from those various facts and circumstances in evidence.

Now I shall not attempt to explain to you every piece of circumstantial evidence in this case. I believe you Ladies and Gentlemen of the Jury have enough intelligence and common sense to look at that evidence and draw your own inferences from it, and that is essentially your job to do so.

Under our system of justice, Ladies and Gentlemen of the Jury, every defendant who comes before this court charged with a crime is presumed innocent until he is proven guilty beyond a reasonable doubt. I have already referred to the burden of the Government in that. You are the sole judges of the facts in this case, and the credibility of the witnesses. If there are some conflicts, Ladies and Gentlemen of the Jury, in this case, it is your duty to resolve the conflicts in the evidence, if you can, upon any reasonable theory. But if you can't resolve the conflicts, then it is your province to determine which witnesses you believe and what you believe. That is for you to determine, and that is what I mean when I say you are the sole judges of the credibility of the witnesses.

Mr. and Mrs. Holland did not choose to testify in this case. That is their privilege. You are to draw no inferences from that circumstance one way or the other. If they see fit not to take the stand, they may do so un-
375 der our system of justice, and the jury is charged to draw no inferences one way or the other about that matter.

Most of the evidence in this case is circumstantial. Some emphasis was made in the arguments to you, Ladies and Gentlemen of the Jury, that there was no evidence here that any statement on the income tax returns for '46, '47, and '48 has been shown to be false. That isn't the issue in this case. The issue in this case is whether or not these defendants filed those income tax returns, reporting the income

on those returns and the tax computed from it, knowingly and wilfully not including gross receipts from the business which the Government claims they earned, and which the Government claims they didn't report.

The Government proceeds upon the theory that there was no such cash fund of a hundred and four thousand dollars, or a hundred and thirteen thousand dollars, and that the increases in their net worth each year were the result of purchases from receipts earned in the taxable years in question from that business. That is the Government's position.

Now the fact that the facts and figures on that return are not questioned in any otherwise by the Government, leaves the Government in the position of Contendere Meruit; contending merely that he earned income which was not reported, not included, and it was therefore omitted.

Ladies and Gentlemen of the Jury, this is a difficult
376 task that you have to perform. As counsel has reminded you, there is no more exhalted duty encumbent upon a public official than the duty impartially, without bias or prejudice of any kind whatsoever, viewing this evidence and deciding whether or not these defendants are guilty of the offenses charged. You should approach that task with the greatest patience and care, and take as long as it requires for you to examine this evidence in detail. I am going to ask counsel in this case to get the exhibits together and in such form that they may go into the jury room with you. I shall take no responsibility for that, and I place that responsibility upon counsel for both parties of this lawsuit, to see that those exhibits are in proper form to go in there.

If you believe, Ladies and Gentlemen of the Jury, and are satisfied beyond a reasonable doubt that the Government's evidence that Mr. Holland and Mrs. Holland did not have that cash fund, or any other source of the money with which they increased their net worth except the gross receipts of this business in the taxable years in question, then you should bring in a verdict of guilty, if you also find Ladies and Gentlemen of the Jury that they have proved to your satisfaction, beyond a reasonable doubt, all of the essential and material elements of the charges in this indictment.

On the other hand, if you are not satisfied, it is your duty to acquit them. The high exalted duty which you are called this afternoon to perform is that of viewing this evidence, not a little piece here or a little piece there, but all
377 of it, fairly, impartially, without any bias or prejudice, or pre-conceived notions about it whatsoever, and after such an examination of the evidence, Ladies and Gentlemen of the Jury, you are to do justice between the United States of America, which is all the people, and these two defendants in this case.

You may not understand, Ladies and Gentlemen of the Jury, the tax system of the United States, and I want to say one word about it. Our Federal Tax Law operates upon the theory of voluntary reporting of income. A Revenue Agent does not come down to my house on March 15th of each year, go over my books and records, and prepare my returns. Every taxpayer in this land who has taxable income, or who doesn't have, has the duty of examining his own books and records, and the Government depends upon that kind of a system to collect its revenues. It relies of necessity upon the taxpayer making a voluntary disclosure. That's what these income tax returns are for. The taxpayer fills out his own return. He puts on it what he thinks in his own conscience he ought to put on it. That is the system upon which we operate—voluntary reporting. Agents of the United States Government Bureau of Internal Revenue, of the Treasury Department, all over the country check some of those returns. They don't check all of them by any means. There are fifty or sixty men. It wouldn't be possible for the Government to check all the returns, but the Government's agents check some of the returns.
378 Now when the Government Agents find a situation in which they think there has been a failure for any reason to report income, or in which the Government's Agents think there have been taken too many deductions from income, those agents look into the matter and they propose additional tax estimates. Sometimes they propose refunds of tax. And I believe upon the audit of one of these returns, or more, the Government proposed a refund on the basis of the information on that return. Now sometimes, Ladies and Gentlemen of the Jury, the Government Agents

are unable to get information which directly shows a failure to report income. The only evidence they are able to get in situations of that kind by reason of the nature of the case is circumstantial evidence. And in this case that is the kind of evidence the Government has to present. They have, as one of the counsel said this morning, paraded these various circumstances before you. From those circumstances it is for you to determine what the reasonable inferences are and what they satisfy you of.

It is not necessary for the Government to offer direct proof of any elements of this offense. It is enough if you are satisfied beyond a reasonable doubt by the circumstantial evidence in this case in making your decision and arriving at your verdict. You may infer wilfullness if the inference to your mind is reasonable from all of the facts and circumstances in evidence. You may consider Mr. and Mrs. Holland's relationship to each other, what each did in the business, and all of the acts in evidence that they have
379 committed or failed to commit at any time.

In deciding whether they knowingly and wilfully attempted to defeat and evade, and Ladies and Gentlemen of the Jury those are two essential elements of this charge, you may base your conclusions upon the facts in evidence and also upon those inferences which to your minds are reasonable to infer.

In this case it is not possible, and it very very rarely is, to look into the mind of the defendant to see what he knew, or to look into the mind of a defendant to see whether he had an attitude of mind of wilfullness. There is only evidence in this case about those matters, from which you Ladies and Gentlemen of the Jury are to determine on the basis of the inferences if you think them reasonable.

Now I have two or three other things I want to say to you. The court instructs you, as I have already told you, one of the essential elements of a crime is wilfullness. The Government charges and the indictment charges that these defendants knowingly and wilfully attempted to defeat and evade. The term "wilfulness" Ladies and Gentlemen, is best defined as a state of mind of the taxpayer wherein he is actually aware of the existence of the tax obligation to

the Government, which he seeks to deceive. A wilfull evasion of the tax requires an intentional act or omission, as contrasted with an accidental, inadvertent, or innocent one.

Now, Ladies and Gentlemen of the Jury, the court further instructs you that you are entitled, along with all
380 of the other evidence in the case in determining the guilt or innocence of these defendants, to take into account the testimony of the character witnesses. There were three witnesses who came here and testified that these people were of good character, with reputation for honesty and integrity and truthfulness, and so forth. You may take that into account. In doing so, Ladies and Gentlemen of the Jury, the court further instructs you that there is no special emphasis to be laid upon the testimony of character witnesses. You are to take that into account along with all the rest of the evidence in this case. If, upon a consideration of all the evidence, including the testimony of character, you believe these defendants and you are satisfied beyond a reasonable doubt, guilty, then you should bring in a verdict against them.

On the other hand, if, taking into account all the evidence, including the character evidence, you are not so satisfied, then you shall acquit them.

The court further charges you, Ladies and Gentlemen of the Jury, that not only must the Government satisfy you on the elements of this offense to which I have referred, but they must satisfy you beyond a reasonable doubt that there was some additional tax due, that is, during the years in question in which the offenses are charged. And the court further charges you in connection with that, that it is not necessary for the Government to prove that the defendant received income in the exact amount stated in the
381 indictment, or claimed here in court, or that the taxes due on the income were exactly in the amount stated in the indictment. It is enough, Ladies and Gentlemen of the Jury, if you find beyond a reasonable doubt that the defendant received a substantial part of the income which he is charged with receiving, and that he wilfully and knowingly attempted to evade and defeat a substantial portion of the taxes alleged to have been due in the indictment.

I have used the term here, Ladies and Gentlemen of the Jury, of "beyond a reasonable doubt." It is not to be expected that you know what the court means by that language. So I am going to tell you what I mean. When I say that the Government must bring before you evidence which satisfies your minds beyond a reasonable doubt, the court does not mean that you should understand that the Government has the burden of satisfying you beyond every doubt, to remove every doubt, leaving no doubt at all. What we are talking about is a doubt based upon reason and common sense, in the exercise of your intelligence. It is a substantial doubt, not a trivial doubt; a significant doubt, not a flimsy one; a real doubt, and not an imaginary one. It's the kind of doubt, Ladies and Gentlemen of the Jury, which you folks in the more serious and important affairs of your own lives might be willing to act upon. Now if you feel such a doubt about the Government's case, it is your duty to acquit them.

When you retire to the jury room select one of your number as foreman. I am going to hand you some forms
382 of verdict. They are in writing. They represent the various alternatives here of guilty and not guilty on the various counts of these indictments, some of which are against Mr. Holland alone, and some of which are against Mrs. Holland alone; one of which, I think, is against them both. When you arrive at your verdict, have your foreman fill out the form which is appropriate to your decision. In this court you must all agree in order to arrive at a verdict. I do not mean it to be understood that you have to arrive at a unanimous agreement. I mean to suggest that to reach a verdict you all may have to agree upon it. Of course you may disagree and be unable to agree, and if that is the case you should report that fact to the court. But in order to arrive at a verdict, the result must be unanimous.

Now, Gentlemen, under the rules you are entitled, I think, to take your exceptions to the court's charge in the presence of the jury, and before they retire, but out of their hearing. And that presents some difficulty in this courtroom. So the practice has developed of asking you folks if you want to, and this is something that I don't urge upon you at all—you may or may not. It's your own choice. —if you

want to you may enter into a stipulation that the exceptions be taken after the jury retires.

Mr. Vigil: The Government will so stipulate.

Mr. Bruno: We'll so stipulate.

The Court: All right. Before the jury retires, however, I think the court ought to have the advantage of hear-
383 ing of any gross mistakes that you think I may have committed. I don't intend to change my theory of this case. If I have said something, or omitted to say something, which ought to be called to my attention so that I could correct it before the Jury leaves, I wish you would do so. I mean in a gross or an obvious sense. I am not asking you now to waive the advantage of your exceptions, which you will take shortly.

Mr. Zarlengo: If the court please, there is something we would like to call to your attention along the lines which your honor has stated.

(Whereupon counsel conferred with the Court at the court's bench)

The Court: Counsel have directed my attention to one matter about which I want to say something further to you, Ladies and Gentlemen of the Jury. Counsel understood the court to say that direct evidence in a case of this kind cannot be obtained. The court does not wish to be so understood. Sometimes there is direct evidence in cases of this kind. Sometimes there isn't direct evidence in cases of this kind. But it's difficult to obtain direct evidence in cases of this kind.

Swear an officer.

* * * * *

The Court: You gentlemen may take your exceptions to the charge now.

Mr. Vigil: The Government has no exceptions to the court's charge.

384 Mr. Zarlengo: If the court please, the defendants would like to make the following objections and take

the following exceptions to the charge that your honor has given the jury. First of all, we object to the charge given on circumstantial evidence for the reason that the charge given by the court is inadequate. Your honor has simply instructed the jury that if they are convinced beyond reasonable doubt of the guilt of the defendants they should return a verdict of guilty. Your honor has not instructed the jury that in a case of circumstantial evidence, such as the one that we are now trying, where the evidence of the prosecution is entirely circumstantial, that the burden of proof placed upon the government is such that the jury must be satisfied beyond a reasonable doubt, and that the evidence presented must exclude every other reasonable hypothesis other than the hypothesis of guilt, and that if it can be explained on any other hypothesis that they should do so. In the instructions now given there is no distinction made by the court in cases where the evidence for the prosecution is based upon direct evidence and where it is based upon circumstantial evidence.

The defendants also object to the instruction and charge on character for the reason that it is inadequate. Your honor has simply told the jury that they may consider the testimony with regard to character. The rule is, as I understand it, that evidence of good character should not only be considered but that the jury should be further told
385 that where there is evidence of good character that that in itself may raise a reasonable doubt, whereas no reasonable doubt may otherwise exist, and the jury should further be told that a person of good character is not as likely to commit a crime as one whose character is not good.

We further object to the charge for the reason that your honor has not read to the jury the statute upon which these indictments are based.

We particularly object to the charge your honor gave the jury because you have failed to instruct the jury on the principal element in the case, which is set forth in the tendered instructions that we offered to your honor before the charge was given. Instructions Nos. 11 and 15. This being a net worth case, it is incumbent upon the prosecution to establish the net worth of the defendants at the beginning of the period

in question with reasonable certainty; namely, January 1st, 1946, and also to establish the net worth of the defendants at the end of the period in question; namely, December 31st, 1948. If they fail to do that, and if they fail to include in the net worth at the beginning of the period assets which the defendants had at that time, then the entire cornerstone of their case has fallen and the jury should return a verdict of not guilty. And we again in that regard call your honor's attention to the Bryan case and the federal cases which we cited to the court yesterday in our motion. We feel
386 that the jury should be fully instructed on this element of the case because it is the very cornerstone upon which their case must necessarily rest. That was fully covered in our tendered instructions 11 and 15.

We further object to the charge of the jury for the reason that we believe the charge has inadequately expressed to the jury the principle of law that if the increase of net worth resulted from investing moneys, accumulated moneys, prior to January 1st, 1948, that the verdict should be not guilty.

We object to that portion of the charge wherein your honor told the jury that it is not an issue of the case whether any false statement was made in the income tax return. We believe that is not a correct statement for the reason that the very charge here, the very indictment, states that the defendant made a false and fraudulent income tax return, wherein he stated his net income for said calendar year, namely 1946, was the sum of $15,336.93, and that the amount of tax due and owing thereon was the sum of $3,980.39, whereas he then and there well knew his net income for the year was the sum of $38,471.03, upon which said net income he owed the United States of America an income tax of $15,688.75. Now the court having told the jury that it's not an issue in the case as to whether or not a false statement was made—

The Court: Well I ordinarily don't say anything about the exceptions to the charge, but as to that one, I do want to say something about it for the record. I think the court's statement, in view of the statements following the
387 one which you referred to, is clear. And the court's point was that nothing on the face of the returns, as you

argued in your closing statement, has been pointed to as a particular item which is untrue, or false, or incorrect. The charge is that the taxpayer just failed to report all of his income. Now I felt obliged to say that to the jury because of your closing statement to them in which you made some point with considerable emphasis that nothing has been pointed out in those returns which was in any wise incorrect. The whole point in this lawsuit and the charge is that he just didn't report all of his income, so you can't point anything out in the return that is incorrect except a failure to report, failure to put down enough income, and had gross receipts unreported. And I believe I said enough to the jury about that so that they could understand those statements.

Mr. Bruno: If your honor please, we further object to the charge to the jury with respect to the instruction on burden of proof. As I remember the instruction, the court simply instructed the jury that the government had the burden of proving each and every material allegation in the indictment. But since your honor did not charge upon what constituted a crime, and the essential elements of it, and since your honor did not instruct upon the act which is the basis of these indictments, that is a very serious error. The jury had nothing before it to determine what the Government's burden was.

We further object to the court's instruction on the
388 presumption of innocence. The court simply advised the jury that a defendant is presumed to be innocent, and that that continues until there is evidence of guilt. I say that that is not a proper statement of the law on this very essential and basic principal. I say to your honor that this presumption continues throughout the case until it is overthrown by evidence sufficient to exclude all reasonable doubt of the guilt; and that the instruction should go further so that it would impose upon the Government the burden of establishing the defendants' guilt beyond a reasonable doubt.

We further object to the court's instructions on reasonable doubt itself. The court told the jury that they could acquit these defendants only if they didn't believe the Government's case, whereas the law is that if they have a

reasonable doubt from all of the evidence, they are duty bound to acquit.

We further object to the court's charge on that portion with respect to wilfullness as being an element of the crime. We believe that the court, although it did give a part of the instruction that we asked, overlooked a very essential element of wilfullness that is defined in Section 145-B of the Act which we are charged with having violated; specifically, the term wilfullness, the jury should have been told, requires a specific wrongful intent to conceal—a known obligation to exist, as compared to a genuine misunderstanding.

We further object to the court's charge on that portion with respect to credibility of witnesses. The court
389 gave none of the tests required by the law as to how the jury should gauge the credibility of the witnesses. It simply told them that their credibility was for them to determine, and nothing more.

We further object to the instructions of the court as a whole, on the ground and for the reason that the court's instruction was an argument, and was argumentative in favor of the Government; that it emphasized the testimony of the Government and minimized the evidence on the part of the defendants in this case.

And of course we reserve our objections as to the instructions we have tendered to your honor and requested so to charge.

Mr. Zarlengo: If your honor please, if we may just to complete the record, have the record show that the defendants, immediately prior to the court's giving the charge to the jury, tendered to the court and asked the court to instruct the jury as outlined in instructions numbered 1 to 17, and that except as the court has charged the jury, the rest of the tendered instructions were refused, and we are leaving the tendered instructions with the reporter.

The Court: Is there anything further in this matter?

(There being nothing further, the case was adjourned to wait the verdict of the jury).

Request for Instructions.

391 Comes now the defendants above-named, by their attorneys, Frank A. Bruno, Anthony F. Zarlengo and H. D. Reed, and respectfully moves this Honorable Court to instruct the Jury in the following regard.

FRANK A. BRUNO,
ANTHONY F. ZARLENGO,
H. D. REED.

Defendants' Requested Instruction No. 1.

392 The Court instructs the jury, that the indictment in case No.....contains three counts. Count One charges that Marion L. Holland, did wilfully and knowingly attempt to defeat and evade, a large part of the income tax due and owing by him to the United States, for the calendar year 1946, by filing or causing to be filed with the Collector of Internal Revenue for this district, a false and fraudulent return, wherein he stated that, his net income for the year was the sum of $15,336.93 and that the tax due and owing thereon was $3,980.39, whereas, he then and there well knew, his net income to be $38,471.03 upon which he owed a tax of $15,688.75.

Count Two of the indictment charges that Marion L. Holland did wilfully and knowingly attempt to defeat and evade, a large part of the income tax due and owing by him, to the United States, for the calendar year 1947, by filing or causing to be filed, a false and fraudulent income tax return with the Collector of Internal Revenue for this district, wherein he stated, that his net income for the year, was a sum of $5,717.57, and that the tax due and owing thereon was $851.74, whereas, as he then and there well knew, his net income for the year was a sum of $34,631.97 upon which net income he owed to the United States an income tax of $13,846.99.

The Third Count of the indictment charges Marion L. Holland and Ethel E. Holland, jointly, with wilfully and knowingly attempting to defeat and evade a large part of their income tax due and owing to the United States, for

the calendar year 1948, by filing or causing to be filed
393 a false and fraudulent income tax return with the Collector of Internal Revenue for this district, wherein they stated that their net income for the year was a sum of $10,211.42 and the tax due and owing thereon was $1,532.52, whereas they then and there well knew, that their net income for the year was the sum of $29,948.16 upon which they owed a tax of $7,518.88.

To each and every count of the indictment the defendants Marion L. Holland and Ethel E. Holland, respectively, have entered their plea of not guilty and these are the issues which you are called upon to determine.

Defendants' Requested Instruction No. 2.

394 The Court instructs the jury, that the indictment in this case, is a mere accusation against the defendants and each of them, and is not, in and of itself, any evidence of the guilt of the defendants or either of them, and no juror should permit himself or herself to be influenced to any extent, however slight, against the defendants or either of them, because of, or on account of the filing of this indictment.

Defendants' Requested Instruction No. 3.

395 The Court instructs the jury that the indictment and the several counts therein contained are based upon Section 145b of 26 U.S.C. which, so far as pertinent provides as follows: "Any person required under this chapter to pay over any tax imposed by this chapter, who wilfully fails to pay over such tax and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof shall" be guilty of crime.

Defendants' Requested Instruction No. 4.

396 The Court instructs the jury that a crime consists of the violation of a public law, in the commission of which there shall be a union or joint operation of an overt act and intention. That is to say, that two elements are necessary to constitute a crime. First, the intention to violate the law, and second, an unlawful act in the furtherance of that intention. If either one of these elements is missing

from the proof, then no crime has been committed and the defendant should be acquitted.

Defendants' Requested Instruction No. 5.

397 The Court instructs the jury that the law presumes the defendants to be innocent, and this presumption continues throughout the case until overthrown by evidence sufficient to exclude all reasonable doubt of guilt. This rule of law which clothes every person accused of crime with a presumption of innocence, and, imposes upon the government the burden of establishing his or her guilt to your satisfaction beyond a reasonable doubt is not intended to aid anyone who is, in fact, guilty of crime to escape, but is a humane provision of the law, intended, so far as human agencies can, to guard against the danger of an innocent person being unjustly punished.

Defendants' Requested Instruction No. 6

398 The Court instructs the jury that while you are not to find the defendants, or either of them, guilty, if you entertain a reasonable doubt of his or her guilt, you are not to search for a doubt. The doubt referred to must be such a doubt as would naturally arise in the mind of a reasonable man or woman upon review of all of the evidence in the case. It means a serious, substantial and well-founded doubt, and not a mere possibility of a doubt. It is such a doubt, as in the important transactions of life, would cause a reasonable and prudent man or woman to hesitate and pause, and when you can say, after considering all of the evidence in the case, that you have an abiding faith of the truth of the charge, then you are in law satisfied beyond a reasonable doubt. On the other hand, if you do not have an abiding conviction of the truth of the charge made, then you are in law not satisfied beyond a reasonable doubt, and in that event you must return a verdict of not guilty.

Defendants' Requested Instruction No. 7

399 The Court instructs the jury, that one of the essential elements of the crime prescribed by Section 145b of 26 U.S.C. is wilfulness, on the part of the taxpayer, to evade or defeat the payment of the tax due.

The term wilfulness is best defined as a state of mind of

the taxpayer wherein he is fully aware of the existence of a tax obligation to the government which he seeks to conceal. A willful evasion of the tax requires an intentional act or omission as compared to an accidental or inadvertent or innocent one. It also requires a specific wrongful intent to conceal an obligation known to exist, as compared to a genuine misunderstanding of what the law requires or a bona fide belief that certain receipts are not taxable.

Defendants' Requested Instruction No. 8

400 The Court instructs the jury that these instructions contain the law which will govern you in this case, and in determining the facts, you should consider only the evidence given upon the trial. Evidence offered at the trial and rejected by the Court and evidence striken from the record by order of the Court should not be considered by you. The opening statements and arguments of counsel and the remarks of the Court and of counsel are not evidence.

The arguments, statements and objections made by counsel to the Court or to each other and the rulings and orders made by the Court, and the remarks made by the Court during the trial and not directed at you, should not be considered by you in arriving at your verdict.

No single one of these instructions state all the law applicable to the case, but all these instructions must be taken and considered together, as they are connected with and related to each other as a whole.

Defendants' Requested Instruction No. 9.

401 The Court instructs the jury, that if they believe and find from all of the evidence, that at the time this charge was made against the defendants, he or she, was a man or a woman of good character, you should take such good character into consideration in passing upon the question of his or her guilt or innocence, for the law presumes that a man or a woman of good character is less likely to commit a crime than one whose character is not good. If, however, upon the consideration of all of the evidence, including that touching his or her good character, you believe him or her to be guilty beyond a reasonable doubt, you should not acquit him or her, solely upon the ground of such good character.

The Court instructs the jury, however, that evidence of good character may, of itself, create a reasonable doubt where otherwise no reasonable doubt would exist, and, in relation to that, you should give such testimony the consideration that it is entitled to.

Defendants' Requested Instruction No. 10.

402 The Court instructs the jury, that in every criminal case the burden is upon the government to prove the guilt of the accused beyond a reasonable doubt, as that term has heretofore been defined for you. In this case, the government has relied entirely upon circumstantial evidence for a conviction at your hands. In such a case as this then, the law requires that the proven facts and circumstances must not only convince you beyond a reasonable doubt, but must be inconsistent with his or her innocence and must be of that strength and character which removes from your minds every reasonable hypothesis of innocence.

Accordingly, I instruct you, that if the proof offered by the government does not convince you beyond a reasonable doubt, or if it is as consistent with innocence as it is with guilt, it will be your duty to acquit the defendants.

Defendants' Requested Instruction No. 11.

403 The Court instructs the jury, that the Government has relied upon what is called the "net worth theory" to establish the several violations of the law it charges in the indictment. That is to say, it relies upon the circumstances of the increased net worth of the defendants in each particular year in question in excess of the reported income for that year, to establish a tax evasion by these defendants.

You are instructed that under this theory of its case, the Government, in order to obtain a conviction, must produce evidence of such a nature as will satisfy you, beyond a reasonable doubt, so that the proof eliminates from your consideration, all the other possible sources or means from which this increase could have come, except from income earned by the defendants, during the year in question which was not reported by them.

You are instructed, therefore, that if you believe from all of the evidence that this increase in net worth during

the year was due to expenditures from cash or money which the defendants had earned and saved or otherwise accumulated, prior to January 1, 1946, it will be your duty to acquit them.

You are further instructed that if you have a reasonable doubt that the increase in net worth during any particular year was due to expenditures made by the defendants from cash which they had earned and saved prior to January 1, 1946, the law requires that you resolve that doubt in favor of the defendants and it will be your duty to acquit them.

You are further instructed that if you have a reasonable doubt as to whether the increase in net worth for any particular year was due to expenditures from prior savings or from income earned by the defendants during
404 the year in question but not reported by them, that doubt must be resolved in favor of the defendants and it will be your duty to acquit them.

Defendants' Requested Instruction No. 12.

405 The Court instructs the jury, that in every criminal case the burden is upon the Government to prove the guilt of the accused beyond a reasonable doubt, as that term has heretofore been defined for you. In this case, the Government has relied almost entirely upon circumstantial evidence for a conviction. In such a case, the law requires that the proven facts and circumstances must not only convince you beyond a reasonable doubt, but must be inconsistent with his or her innocence and must be of that strength and character which removes from your minds every hypothesis, save, that of his or her guilt.

Accordingly, I instruct you, that if the proof offered by the Government does not convince you beyond a reasonable doubt, or if it is as consistent with innocence as it is with guilt, or if it does not exclude every reasonable possibility of innocence, it will be your duty to acquit these defendants.

Defendants' Requested Instruction No. 13.

406 The Court instructs the jury that the burden is upon the Government to prove each and every material allegation in each of the several counts of the indict-

ment to your satisfaction beyond a reasonable doubt; and if any one or more of the material allegations in the several counts of the indictment has not been so proven, you should not find the defendant charged in that count guilty. It will be your duty to return a verdict of not guilty. Upon the other hand, if you find from the evidence that each and every material allegation, in the several counts of the indictment, have been proven to your satisfaction beyond a reasonable doubt, you should find the defendant charged in the count guilty as charged.

If you find from the evidence that each and every material allegation has not been proven to your satisfaction beyond a reasonable doubt, in any of the three counts, then it will be your duty to acquit the defendant.

Defendants' Requested Instruction No. 14.

407 The Court instructs the jury that as an essential element of its case the Government must prove beyond a reasonable doubt not only that the defendants have attempted wilfully to defraud it, but also that a tax in addition to what the defendants have already paid remains due and owing.

Defendants' Requested Instruction No. 15.

408 The Court instructs the jury that when the Government relies upon the circumstances of increased net worth and expenditures in excess of reported income to establish income tax evasion, as it does in this case, it must produce evidence that excludes all possible available sources of taxable income from which the increased net worth and the excess expenditures could have been derived. The net worth expenditures method of establishing net income sought to be applied in this case is effective and can be considered only if the computations of net worth at the beginning and at the end of the question periods can reasonably be accepted as accurate. That is to say, it is incumbent on the Government to establish with accuracy the net worth of the defendants on January 1, 1946, which is the beginning of the period in question, and the net worth of the defendants on December 31, 1948, which is the end

of the period in question. If there is a reasonable doubt in your mind as to the computations of the Government as to the net worth of the defendants on either of these periods, or if there is a reasonable doubt in your mind as to whether the Government, in making its computations of net worth as to either of these periods, omitted assets of the defendants, such as cash on hand, stocks or other securities, then you should return a verdict of not guilty.

One of the essential elements that the Government must establish in this case is that the defendants had no other assets on January 1, 1946, other than those which the Government contends they had on said date. The evidence of the Government in this case is entirely circumstantial. In this regard, you are instructed that circumstantial evidence must be of such character as to exclude every reasonable hypothesis except that of guilt.

Defendants Requested Instruction No. 16.

409 The Court instructs the jury, that they are the sole judges of the credibility of the witnesses and of the weight to be given to the testimony of each witness, whether offered by the government or by the defendants or either of them. In determining the weight to be given to the testimony of the witnesses, you should take into consideration their means of knowledge, strength of memory and opportunities for observation as shown by the evidence in the case; the reasonableness or unreasonableness of their statements; the consistency or inconsistency of their testimony; the motives actuating them, so far as such motives appear from the evidence in the case; the fact, if it be a fact, that they have been contradicted by other evidence in the case; their bias, prejudice or interest, if any has been shown; their manner or demeanor upon the witness stand, and all other facts and circumstances shown by the evidence which in your sole judgment affects the credit due to them respectively, and if, after considering all of the evidence, you find that any witness has wilfully or wrongfully testified falsely to any fact material to the issues in the case, you have a right to disregard the whole or any part of his or her testimony.

Defendants' Requested Instruction No. 17.

410 The Court instructs the jury that evidence has been introduced to show that the defendant, Marion L. Holland made certain admissions appearing in evidence, verbal statements or admissions should be received by the jury with great caution, as they are subject to much imperfection and mistake, owing to the person speaking not having clearly expressed his own meaning, or the person spoken to not having clearly understood the speaker. It frequently happens, also, that the witness, by unintentionally altering a few words or expressions really used, gives an effect to the statement entirely at variance with what the speaker actually did say.

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File this return with Collector of Internal Revenue on or before March 15, 1947. Any balance of tax due (item 9, below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1946

1946

or fiscal year beginning ....., 1946, and ending ....., 1947

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than $5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

File Code 177
Serial No. 9080875
District Colorado
(Cashier's Stamp)

RECEIVED
MAR 15 1947
COLL. INT. REV.
DIST. COLO.

Name Marion L. Holland
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS 1310 Washington Avenue
(PLEASE PRINT. Street and number or rural route)

Golden (City or town, postal zone number) Jefferson (County) Colo. (State)

Occupation ..... Social Security No. .....

Your Exemptions

List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in Instruction 1) with 1946 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

	Name (please print)	Relationship	Name (please print)	Relationship
1.	Your name Marion L.	x x x x x x x x x		
	Ethel E.	wife		
	William	son		

Your Income

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1946, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

	Print Employer's Name	Where Employed (City and State)	Amount			
2.			$			
			Enter total here →		$	
3.	Enter here the total amount of your dividends					
4.	Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation)					
5.	If you received any other income, give details on page 2 and enter the total here				15,836	93

ACCEPTED

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Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	$	4. Total amount received this year	$
2. Amount received tax-free in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of your cost (line 1 less line 2)	$	6. Enter line 5, or 3 percent of line 1, whichever is greater (Attach separate schedule for each additional annuity or pension)	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (itemize in Schedule G)	
1 - Brick Res.	$ 105 00	$ 49 98	$ ✓	$ 39 60	
2 - Cinder Blk Bldg	750 00	93 75			
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$ 855 00	$ 143 73	$	$ 39 60	671 67

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

(State (1) nature of business Hotel-Rer-Restaurant; (2) business name Le Roy Hotel)

1. Total receipts — started business April 1, 1946			$ 16,078	15
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)				
2. Inventory at beginning of year	$ 4,700 00			
3. Merchandise bought for sale	64,733 33			
4. Labor				
5. Material and supplies				
6. Other costs (explain in Schedule G)				
7. Total of lines 2 to 6	$ 69,433 33			
8. Less inventory at end of year	1,300 00			
9. Net cost of goods sold (line 7 less line 8)	$ 68,133 33			
10. Gross profit (line 1 less line 9)	$			
OTHER BUSINESS DEDUCTIONS				
11. Salaries and wages not in line 4			$ 19,779	84
12. Interest on business indebtedness			694	48
13. Taxes on business and business property			1,777	77
14. Losses (explain in Schedule G)				
15. Bad debts arising from sales or services				
16. Depreciation, obsolescence and depletion (explain in Schedule F)			2,507	72 ✓
17. Rent, repairs, and other expenses (explain in Schedule G)			18,988	19 ✓
18. Amortization of emergency facilities (attach statement)				
19. Net operating loss deduction (attach statement)				✓
20. Total of lines 11 to 19			$ 43,748	00
21. Total of lines 9 and 20			$ 11,861	33 ✓
22. Net profit (or loss) (line 1 less line 21)				4,196 82

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	10,268 44 ✓

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Do not itemize deductions if—(1) You determine your tax from the tax table on page 4, or
(2) Your total income is $5,000 or more and you claim the $500 standard deduction.
If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.		Amount
Contributions		
	$	
Allowable Contributions (not in excess of 15 percent of item 6, page 1)		$
Interest		
	$	
Total Interest		
Taxes		
	$	
Total Taxes		
Losses from fire, storm, shipwreck, or other casualty, or theft.		
	$	
Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses		
	$	
Net Expenses (not compensated by insurance or otherwise)	$	
Enter 5 percent of item 6, page 1, and subtract from Net Expenses		
Allowable Medical and Dental Expenses. See Instruction for limitation		
Miscellaneous		
	$	

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Schedule D (Form 1040)

U. S. TREASURY DEPARTMENT
Internal Revenue Service

SCHEDULE OF GAINS AND LOSSES FROM SALES OR EXCHANGES OF (1) CAPITAL ASSETS AND (2) PROPERTY OTHER THAN CAPITAL ASSETS

(TO BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE WITH FORM 1040)

For Calendar Year 1946

Or fiscal year beginning ....., 1946, and ending ....., 1947

(See Instructions on other side)

Name of taxpayer Marion L. Holland

Address 1310 Washington Avenue, Golden

(1) CAPITAL ASSETS

1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	8. Gain or loss (column 4 plus column 7 less the sum of columns 5 and 6)	Gain or loss to be taken into account: 9. Percentage	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS									
20th Century Fox Film Corp	7-1943	2-2-46	$26,320 72	$15,000 00	$ 279 35	$	$ 11,041 37	50	$ 5,520 68
" " " "	7-1945	2-2-46	10,578 16	5,650 00	110 34		4,817 82	50	2,408 91
Midland Steel Products	7-1943	2-25-46	5,114 51	3,000 00	55 49		2,059 02	50	1,029 51
" " "	7-1943	2-26-46	10,129 39	6,000 00	110 71		4,018 68	50	2,009 34
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$ 10,968 44

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Capital loss carry-over (attach statement)	3. Net gain or loss to be taken into account from column 10, above: (a) Gain	3. (b) Loss	4. Net gain or loss to be taken into account from partnerships and common trust funds: (a) Gain	4. (b) Loss	5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary: (a) Gain	5. (b) Loss
1. Total net short-term capital gain or loss	$	$	$	$	$	$	$
2. Total net long-term capital gain or loss		$	$	$	$	$	$
3. Net gain in column 5, lines 1 and 2. (Enter on line 1, Schedule D, page 2, Form 1040)						$	XXXXXX X
4. Net loss in column 5, lines 1 and 2. (The amount to be entered on line 1, Schedule D, page 2, Form 1040, is (1) this item or (2) net income, or adjusted gross income if tax is computed by use of the tax table on page 4, Form 1040, computed without regard to capital gains or losses, or (3) $1,000, whichever is smallest)						XXXXXX X	$

Marion L. Holland, 1310 Washington Avenue, Golden, Colorado.

1040 1946—Schedule C Item 17

Water	$ 254.16
Gas	451.72
Electric	695.91
Fuel	360.17
Advertising	1,780.63
Ice	395.34
Postage and Printing	13.05
Transportation	352.73
Telephone	574.22
Office Expense	648.24
Garbage and Trash	127.00
Exterminating	88.25
General Miscellaneous	214.71
Light Bulbs	22.70
Attorney Fees	100.00
Locker Rent	141.66
Truck Operating Expense	355.07
Business Org. Dues	275.00
Plumbing Repairs	434.60
Insurance	2,377.50
Flowers	32.07
Hotel Laundry and Cleaning	1,318.75
Hotel Minor Repairs	643.96
Window Wash	10.50
Misc. Hotel Oper. Sup.	51.75
Mis. Hotel Expense	194.76
Repairs Restaurant Equip.	1,625.32
Restaurant Laundry	2,527.59
Glasses and Dishes	1,223.36
Rest. Misc. Expense	159.98
Sales Tax included in Gross Income	1,537.49
Total	$18,988.19

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File this return with Collector of Internal Revenue on or before March 15, 1948. Any balance of tax due (item 9, below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1947

1947

or fiscal year beginning _____, 1947, and ending _____, 1948

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than $5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

File Code 9001208

Serial No.

District Colorado

(Cashier's Stamp)

Name Marion L. Holland
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS 1310 Washington Ave.
(PLEASE PRINT. Street and number or rural route)

Golden (City or town, postal zone number) Jefferson (County) Colorado (State)

Occupation _____ Social Security No. _____

Your Exemptions

List your own name.
If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in Instruction 1) with 1947 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

1.

Name (please print)	Relationship	Name (please print)	Relationship
Your name Marion L.	xxxxxxxxx		
Ethel	wife		
William	son		

Your Income

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1947, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

2.

Print Employer's Name	Where Employed (City and State)	Amount	
		$	

Enter total here → $ _____

3. Enter here the total amount of your dividends _____

4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation) _____

5. If you received any other income, give details on page 2 and enter the total here _____ 6,216 77

6. Add amounts in items 2, 3, 4, and 5, and enter the total here $ 6,216 77

L

Your Income

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1946, BEFORE PAY-ROLL DEDUCTIONS for taxes, fees, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

2. Print Employer's Name	Where Employed (City and State)	Amount		
		$		
			Enter total here →	$

ACCEPTED AUG 23 1947 By:

3. Enter here the total amount of your dividends		
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation)		
5. If you received any other income, give details on page 2 and enter the total here	15,836	93
6. Add amounts in items 2, 3, 4, and 5, and enter the total here	$ 15,836	93

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of $500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

7. Enter your tax from table on page 4, or from line 12, page 3		$ 3,980 39
8. How much have you paid on your 1946 income tax?		
(A) By withholding from your wages	$	
(B) By payments on 1946 Declaration of Estimated Tax	4,978 00	
Enter total here →		4,978 00
9. If your tax (item 7) is larger than payments (item 8), enter **BALANCE OF TAX DUE** here		$
10. If your payments (item 8) are larger than your tax (item 7), enter the **OVERPAYMENT** here		$ 997 61

Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1947 estimated tax ☒

If you filed a return for a prior year, what was the latest year? 1945

To which Collector's office was it sent? Denver

To which Collector's office did you pay amount claimed in item 8 (B), above?

Is your wife (or husband) making a separate return for 1946? no ("Yes" or "No")

If "Yes," write below:

Name of wife (or husband)

Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date)

Marion L. Ballard (Signature of taxpayer) (Date)

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

16—49264-3

2. Inventory at beginning of year	$ 1,700	00	14. Losses (explain in Schedule G)				
3. Merchandise bought for sale	64,733	33	15. Bad debts arising from sales or services				
4. Labor			16. Depreciation, obsolescence and depletion (explain in Schedule F)	2,507	72		
5. Material and supplies			17. Rent, repairs, and other expenses (explain in Schedule G)	18,988	19		
6. Other costs (explain in Schedule G)			18. Amortization of emergency facilities (attach statement)				
7. Total of lines 2 to 6	$ 66,433	33	19. Net operating loss deduction (attach statement)				
8. Less inventory at end of year	1,300	00	20. Total of lines 11 to 19	$ 43,748	00		
9. Net cost of goods sold (line 7 less line 8)	$ 68,133	33	21. Total of lines 9 and 20	$ 111,881	33		
10. Gross profit (line 1 less line 9)	$		22. Net profit (or loss) (line 1 less line 21)			4,196	82

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	10,268	44
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)		

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.—Amount,	$	
2. Name and address of estate or trust.—Amount,		
3. Other sources (state nature).—Amount,		
4. Total		
Total income from above sources (Enter as item 5, page 1)	$ 15,836	93

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
B-1 Brick Res.	10-1-46	$ 10,000	$	$	$	50	1 1/4	$ 49 98
B-2 Cinder Blk	same	15,000				40	1 1/4	93 75
C-16 Brick Bldg	1-1-46	50,000				50	1 3/4	750 00
Furn & Fix.	same	25,000				12	1 3/4	1562 50
Equip.	7-1-46	3,201.56				10	1 1/2	195 32

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
C-17	See attached sheet	$			$

Losses from fire, storm, shipwreck, or other casualty, or theft.					
	Total Allowable Losses (not compensated by insurance or otherwise)				
Medical and dental expenses		$			
	Net Expenses (not compensated by insurance or otherwise)	$			
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses				
	Allowable Medical and Dental Expenses. See Instruction for limitation				
Miscellaneous (See Instructions)		$			
	Total Miscellaneous Deductions				
	TOTAL DEDUCTIONS			$	

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	$15,836	93
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $500)	500	00
3. Subtract line 2 from line 1. Enter the difference here. **This is your Net Income**	$15,336	93
4. Enter your exemptions ($500 for each person whose name is listed in item 1, page 1)	1,500	00
5. Subtract line 4 from line 3. Enter the difference here	$13,836	93
6. Use the tax rates in instruction sheet to figure your combined tentative normal tax and surtax on amount entered on line 5. Enter the tentative tax here. (If line 3 above includes partially tax-exempt interest, see Tax Computation Instructions)	$ 4,189	88
7. Enter here 5 percent of amount entered on line 6	209	49
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax computation is made on separate Schedule D, enter here tax from line 12 of Schedule D)	$ 3,980	39

IF YOU USED THE $500 STANDARD DEDUCTION IN LINE 2, DISREGARD LINES 9, 10, AND 11, AND COPY ON LINE 12 THE SAME FIGURE YOU ENTERED ON LINE 8.

9. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$	
10. Enter here any income tax paid at source on tax-free covenant bond interest		
11. Add the figures on lines 9 and 10 and enter the total here		
12. Subtract line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax	$ 3,980	39

"	"	"	"	"	7-1945	2-26-46	10,578	16	5,650	00	110	34			4,812	82	50	2,408	91
Midland Steel Products					7-1943	2-25-46	5,114	50	3,000	00	55	49			2,059	02	50	1,029	51
"	"	"			7-1943	2-26-46	10,129	39	6,000	00	110	71			4,018	68	50	2,009	34

Total net long-term capital gain or loss (enter in line 2, column 3, of summary below) ..... $10,968 | 44

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Capital loss carry-over (attach statement)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and common trust funds		5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary	
		(a) Gain	(b) Loss	(a) Gain	(b) Loss	(a) Gain	(b) Loss
1. Total net short-term capital gain or loss	$	$	$	$	$	$	$
2. Total net long-term capital gain or loss		$	$	$	$	$	$
3. Net gain in column 5, lines 1 and 2. (Enter on line 1, Schedule D, page 2, Form 1040)						$	x x x x x x
4. Net loss in column 5, lines 1 and 2. (The amount to be entered on line 1, Schedule D, page 2, Form 1040, is (1) this item or (2) net income, or adjusted gross income if tax is computed by use of the tax table on page 4, Form 1040, computed without regard to capital gains or losses, or (3) $1,000, whichever is smallest)						x x x x x x	$

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term *capital gain* over net short-term *capital loss*, and line 5, page 3, Form 1040, exceeds $18,000

1. Net income (line 3, page 3, Form 1040)	$	6. Combined tentative normal tax and surtax on amount on line 5. (See Tax Computation Instructions on page 4 of Form 1040 Instructions)	$
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 5 (a), less line 1, column 5 (b), of summary above)		7. Less: 5 percent of line 6	
		8. Partial tax (line 6 less line 7)	$
3. Ordinary net income (line 1 less line 2)	$	9. 50 percent of line 2	
4. Less: Exemptions (line 4, page 3, Form 1040)		10. Alternative tax (line 8 plus line 9)	$
		11. Total normal tax and surtax (line 8, page 3, Form 1040)	$
5. Balance	$	12. Tax liability (line 10 or line 11, whichever is the lesser). (Enter on line 8, page 3, Form 1040)	$

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	7. Gain or loss (column 3 plus column 6 less the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter on line 2, Schedule D, page 2, Form 1040)						$

If any item in this schedule was acquired by you otherwise than by purchase, attach a statement explaining how acquired.

16—48252-1

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	$		4. Total amount received this year	$	
2. Amount received tax-free in prior years			5. Excess, if any, of line 4 over line 3		
3. Remainder of your cost (line 1 less line 2)	$		6. Enter line 5, or 3 percent of line 1, whichever is greater (Attach separate schedule for each additional annuity or pension)	$	

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (itemize in Schedule G)	
see attached supplemental sheet			$	$	
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$	$	$	$	809 71

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of business Hotel, Bar & Restaurant; (2) business name LaRay Hotel;
(3) business address Golden, Colo.

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts $ 157,912 85

COST OF GOODS SOLD

(To be used where inventories are an income-determining factor)
(Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)

2. Inventory at beginning of year	$ 1300	00
3. Merchandise bought for sale	91,412	50
4. Labor		
5. Material and supplies		
6. Other costs (explain in Schedule G)		
7. Total of lines 2 to 6	$ 92,712	50
8. Less inventory at end of year	2,247	03
9. Net cost of goods sold (line 7 less line 8)	$ 90,465	63
10. Gross profit (line 1 less line 9)	$	

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not in line 4	$ 27,128	34
12. Interest on business indebtedness	187	50
13. Taxes on business and business property		
14. Losses (explain in Schedule G)		
15. Bad debts arising from sales or services		
16. Depreciation, obsolescence and depletion (explain in Schedule F)	4377	51
17. Rent, repairs, and other expenses (explain in attached sheet)	30,346	01
18. Amortization of emergency facilities (attach statement)		
19. Net operating loss deduction (attach statement)		
20. Total of lines 11 to 19	$ 62,039	50
21. Total of lines 9 and 20	$ 152,504	99
22. Net profit (or loss) (line 1 less line 21)		

5407 80

L

Your Income

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1947, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

2. Print Employer's Name	Where Employed (City and State)	Amount	
		$	

Enter total here → $

3. Enter here the total amount of your dividends
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation)
5. If you received any other income, give details on page 2 and enter the total here — 6,216 77
6. Add amounts in items 2, 3, 4, and 5, and enter the total here — $ 6,216 77

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of $500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

7. Enter your tax from table on page 4, or from line 12, page 3 — $ 851 74
8. How much have you paid on your 1947 income tax?
   (A) By withholding from your wages — $ 1766 30
   (B) By payments on 1947 Declaration of Estimated Tax —
   Enter total here → 1766 30
9. If your tax (item 7) is larger than payments (item 8), enter **BALANCE OF TAX DUE** here — $
10. If your payments (item 8) are larger than your tax (item 7), enter the **OVERPAYMENT** here — $ 914 56

Check (✓) whether you want this overpayment: **Refunded to you** ☒; **or Credited on your 1948 estimated tax** ☐

If you filed a return for a prior year, what was the latest year? 1946

To which Collector's office was it sent? Denver

To which Collector's office did you pay amount claimed in item 8 (B), above? Denver

Is your wife (or husband) making a separate return for 1947? No ("Yes" or "No")

If "Yes," write below:

Name of wife (or husband)

Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date)

W L Hallmark
(Signature of taxpayer) (Date)

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

16—89088-1

P.245

(SUPPLEMENTAL SHEET ** MARION L. HOLLAND)

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	$	4. Total amount received this year	$
2. Amount received tax-free in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of your cost (line 1 less line 2)	$	6. Enter line 5, or 3 percent of line 1, whichever is greater (Attach separate schedule for each additional annuity or pension)	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (itemize in Schedule G)	
Apts.	$ 209 50	$	$ 684 37	$ 382 73	
Frame Dwg.	350 00			174 84	
Business Bldg.	2105 00			195 36	
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$ 2964 50	$ 717 49	$ 684 37	$ 752 93	$ 809 71

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of busines. ; (2) business name ;

(3) business address

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts $

COST OF GOODS SOLD

(To be used where inventories are an income-determining factor)
(Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)

2. Inventory at beginning of year	$
3. Merchandise bought for sale	
4. Labor	
5. Material and supplies	

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not in line 4	$
12. Interest on business indebtedness	
13. Taxes on business and business property	
14. Losses (explain in Schedule G)	
15. Bad debts arising from sales or services	
16. Depreciation, obsolescence and depletion (explain in Schedule F)	
17. Rent, repairs, and other expenses	

Lower portion of this page is in following frame.

— Cameraman

income-determining factor) (Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)			12. Interest on business indebtedness		
2. Inventory at beginning of year	$		13. Taxes on business and business property		
3. Merchandise bought for sale			14. Losses (explain in Schedule G)		
4. Labor			15. Bad debts arising from sales or services		
5. Material and supplies			16. Depreciation, obsolescence and depletion (explain in Schedule F)		
6. Other costs (explain in Schedule G)			17. Rent, repairs, and other expenses (explain in Schedule G)		
7. Total of lines 2 to 6	$		18. Amortization of emergency facilities (attach statement)		
8. Less inventory at end of year			19. Net operating loss deduction (attach statement)		
9. Net cost of goods sold (line 7 less line 8)	$		20. Total of lines 11 to 19	$	
			21. Total of lines 9 and 20	$	
10. Gross profit (line 1 less line 9)	$		22. Net profit (or loss) (line 1 less line 21)		

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.	Amount,	$
2. Name and address of estate or trust	Amount,	
3. Other sources (state nature)	Amount,	
4. Total		
Total income from above sources (Enter as item 5, page 1)		$

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

	1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
	Improvements	9-11-47	$ 1585 00	$	$	$	~~40~~	al 4/12	$ 13 20
	F & F Blinds	9-17-47	84 93				5	al 3/12	4 29
B-1	Frame Apts.	5-8-47	7500 00				40	al 8/12	125 00
B-2	Brick Res.	10-1-46	10,000				50		200 00
~~B-3~~	~~Cinder Block Bd.~~	~~10-1-46~~	~~12,000~~				~~40~~		~~323 00~~
									717.49

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
B-1-5	Water	$ 54 17	B-2-5	Water	$ 16 45
B-1-5	Fuel	96 05	B-2-5	R. E. Taxes	158 39
B-1-5	Electricity	94 98			
B-1-5	Interest	137 53			
B-1-4	Repairs	369 37	B-3-5	R. E. Taxes	195 36
~~B-1-4~~	~~Rececorating~~	315.00			

16—52963-1 ☆ GPO

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Do not itemize deductions if—(1) You determine your tax from the tax table on page 4, or
(2) Your total income is $5,000 or more and you claim the $500 standard deduction.
If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.		Amount
Contributions	$	
Allowable Contributions (not in excess of 15 percent of item 6, page 1)		$
Interest	$	
Total Interest		
Taxes	$	
Total Taxes		
Losses from fire, storm, shipwreck, or other casualty, or theft.	$	
Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses	$	
Net Expenses (not compensated by insurance or otherwise)	$	
Enter 5 percent of item 6, page 1, and subtract from Net Expenses		
Allowable Medical and Dental Expenses. See Instruction for limitation		
	$	

COMPUTATION PROVED KD

D. M.

FORM 1040

Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

1948

For calendar year 1948 or fiscal year beginning _____, 1948, and ending _____, 1949

MAR 2 53

CASE NO. 43

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than $5,000, consisting wholly of wages shown on Forms W-2, or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

File Code 3009488

Serial No.

(Cashier's Stamp)

RECD WITH REMITTANCE

MAR 14 1949

COLL. INT. REV. DIST. COLO.

Name Marion L. and Ethel Holland
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 1310 Washington Avenue
(PLEASE PRINT. Street and number or rural route)

Golden (City, town, or post office) — (Postal zone number) — Colorado (State)

Occupation _____ Social Security No. _____

1. List your own name.
If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in Instructions) with 1948 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your exemptions

Name (please print)	Check below whether you (or your wife) were at the end of your taxable year— 65 OR OVER	BLIND	On lines a and b below— Write 1 if neither 65 nor blind; Write 2 if either 65 or blind; Write 3 if both 65 and blind.
Your name Marion L.	Yes ☐ No ☒	Yes ☐ No ☒	a. Number of exemptions for you 1
Wife's (or husband's name) Ethel	Yes ☐ No ☒	Yes ☐ No ☒	b. Number of her (his) exemptions 1

Name of Other Dependent Relative	Relationship	Address—If different from yours
William	son	

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 3

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1948, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instructions.

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
		$	$
	Enter totals	$	$

3. Enter here the total amount of your dividends

4. Enter here the total amount of your interest (including interest from Government obligations unless

3. Merchandise bought for sale	91,412	00	13. Bad debts arising from sales or services		
4. Labor			16. Depreciation, obsolescence and depletion (explain in Schedule F)	4377	51
5. Material and supplies			17. Rent, repairs, and other expenses (see attached sheet	30,346	01
6. Other costs (explain in Schedule G)			18. Amortization of emergency facilities (attach statement)		
7. Total of lines 2 to 6	$ 92,712	66	19. Net operating loss deduction (attach statement)		
8. Less inventory at end of year	2,247	05	20. Total of lines 11 to 19	$ 62,039	50
9. Net cost of goods sold (line 7 less line 8)	$ 90,465	63	21. Total of lines 9 and 20	$ 152,504	99
10. Gross profit (line 1 less line 9)	$		22. Net profit (or loss) (line 1 less line 21)		5407 80

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.	Amount,	$
2. Name and address of estate or trust	Amount,	
3. Other sources (state nature)	Amount,	
4. Total		
Total income from above sources (Enter as item 5, page 1)		$ 0217 57

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
C-17 Brick Bldg.	4-1-46	$ 50,000 00	$	$	$	50		$ 1000 00
F & F	4-1-46	25,000				12		2083 33
Equipment	7-1-46	3,904 56				10		390 45
Improvements	12-4-47	1,426 80				50 al 1/12		2 37
F & F hard	9-12-47	$ 2,909 58	$	$	$	10 al 4/12		$ 96 96
F & F soft	6-16-47	5,113 87				5 al 1/2		511 38
Equipment	7-14-47	5,169 79				10 al 1/2		256 46
Improvements	7-10-47	829 00				12 al 1/2		34 54

M. L. Holland, 1947

Schedule C—Profit or Loss from Business or Profession
Item 17—Rent, Repairs and other expenses, to be shown in Schedule G:

Item	Amount
Bar:	
Glasses and Dishes	$ 5.10
Misc. Oper. Expense	3.20
Cafe:	
Repairs	116.88
Laundry	4,256.52
Glasses and Dishes	3,916.40
Misc. Oper. Expense	108.84
Hotel:	
Laundry and Cleaning	2,075.68
Repair	1,476.56
Window Wash	97.90
Misc. Oper. Expense	581.09
Miscellaneous	8.25
General Expenses:	
Taxes	2,791.63
Water	332.46
Gas	778.00
Fuel	482.08
Electric Power	1,292.34
Rent	500.00
Interest	685.93
Telephone	712.42
Office Expense	796.15
Advertising	3,222.52
Ice	667.21
Transportation	261.94
Insurance	446.75
Garbage and Trash	178.00
Exterminating	58.50
Bank Charges	39.87
Miscellaneous	139.04
Light Bulbs	78.38
Locker Rent	47.50
Attorney Fees	87.00
Plumbing	760.07

Business Dues	75.00
Car Operating Expense	761.81
Flowers	58.18
Police Dues	30.00
Sales Tax	2,417.81
Total	$30,346.01

Losses from fire, storm, shipwreck, or other casualty, or theft.					
	Total Allowable Losses (not compensated by insurance or otherwise)				
Medical and dental expenses		$			
	Net Expenses (not compensated by insurance or otherwise)	$			
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses				
	Allowable Medical and Dental Expenses. See Instruction for limitation				
Miscellaneous (See Instructions)		$			
	Total Miscellaneous Deductions				
	TOTAL DEDUCTIONS			$	

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	$ 6217	57
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1. above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $500)	500	00
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 5717	57
4. Enter your exemptions ($500 for each person whose name is listed in item 1, page 1)	1500	00
5. Subtract line 4 from line 3. Enter the difference here	$ 4217	57
6. Use the tax rates in instruction sheet to figure your combined tentative normal tax and surtax on amount entered on line 5. Enter the tentative tax here. (If line 3, above, includes partially tax-exempt interest, see Tax Computation Instructions)	$ 896	57
7. Enter here 5 percent of amount entered on line 6, above	44	83
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax computation is made on separate Schedule D, enter here tax from line 12 of Schedule D)	$ 851	74

IF YOU USED THE $500 STANDARD DEDUCTION IN LINE 2, DISREGARD LINES 9, 10, AND 11, AND COPY ON LINE 12 THE SAME FIGURE YOU ENTERED ON LINE 8.

9. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$	
10. Enter here any income tax paid at source on tax-free covenant bond interest		
11. Add the figures on lines 9 and 10 and enter the total here		
12. Subtract line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax	$ 851	74

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 3

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1948, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of armed forc and persons claiming traveling or reimbursed expenses, see Instructions.

	Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
1			$	$
		Enter totals	$	$

3. Enter here the total amount of your dividends
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation)
5. If you received any other income, give details on page 2 and enter the total here — 11,211 42
6. Add income shown in items 2, 3, 4, and 5, and enter the total here — $ 11,211 42

How to figure your tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and comp your tax on page 3. You may either take a standard deduction or itemize y deductions, whichever is to your advantage.

HUSBAND AND WIFE.—To obtain benefits of split-income provisions, husb and wife must file a joint return. If husband and wife file separate returns, a one itemizes deductions, the other must also itemize deductions.

Tax due or refund

7. Enter your tax from table on page 4, or from line 18, page 3 — $ 1,532 52
8. How much have you paid on your 1948 income tax?
   (A) Total tax in item 2, above (attach Original Forms W-2) — $
   (B) By payments on 1948 Declaration of Estimated Tax — 710 64
   Enter total here → 710 64
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here — $ 821 88
   This balance of tax due must be paid in full with return.
10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here — $
    Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1949 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1947

To which Collector's office was it sent? Denver

To which Collector's office did you pay amount claimed in item 8 (B), above? Denver

Is your wife (or husband) making a separate return for 1948? no (Yes or No)

If "Yes," write her (or his) name

Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best my knowledge and belief is a true, correct, and complete return.

Dwight F. Dulaigh — (Signature of person, other than taxpayer, preparing this return) — (Date)

(Name of firm or employer, if any)

Marion L. Holland — (Signature of taxpayer) — MAR 12 (Date)

Ethel Holland — (Signature of taxpayer's wife or husband if this is a joint return) — MAR 12 (Date)

To assure any benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has incom

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Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	$	4. Total amount received this year	$
2. Amount received tax-free in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of cost (line 1 less line 2)	$	6. Enter line 5, or 3 percent of line 1, whichever is greater (but do not enter more than line 4)	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (itemize in Schedule G)	
See attached sheet	$	$	$	$	
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$	$	$	$	(674 03)

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of business Hotel Bar and Restaurant; (2) business name Holland House formerly LaRoy Hotel

(3) business address 1310 Wash. Ave., Golden, Colorado

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts				$ 221,052 45	
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)			**OTHER BUSINESS DEDUCTIONS**		
2. Inventory at beginning of year	$ 2,247 05		11. Salaries and wages not in line 4	$ 42,486 94	
3. Merchandise bought for sale	119,199 94		12. Interest on business indebtedness		
4. Labor			13. Taxes on business and business property		
5. Material and supplies			14. Losses (explain in Schedule G)		
6. Other costs (explain in Schedule G)			15. Bad debts arising from sales or services		
7. Total of lines 2 to 6	$ 121,446 99		16. Depreciation, obsolescence, and depletion (explain in Schedule F)	6,517 06	
8. Less inventory at end of year	2,460 00		17. Rent, repairs, and other expenses (explain in Schedule G)	41,176 01	
9. Net cost of goods sold (line 7 less line 8)	$ 118,986 99		18. Amortization of emergency facilities (attach statement)		
			19. Net operating loss deduction (attach statement)		
			20. Total of lines 11 to 19	$ 90,180 01	
10. Gross profit (line 1 less line 9)	$		21. Total of lines 9 and 20	$ 209,167 00	
			22. Net profit (or loss) (line 1 less line 21)		11,885 45

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

Name and Address M. L. Holland

For year: 1943
Attached to form: 1040

Schedule B — Income From Rents And Royalties

	1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. DEPRECIATION OR DEPLETION	4. REPAIRS	5. OTHER EXPENSES	6. NET PROFIT	
A	Brick Apts.	70 00	118 12	150 05	355 64	553 81	✓
B	Frame Apts.	915 50	223 05	133 11	829 56	270 22	✓
C	Bus. Bldg.	150 00			~~150 00~~	150 00	674.03
D							
E							
F							
G							
H							
I							
J							

Explanation of Items Claimed in Columns 4 and 5 Above

KEY		AMOUNT		KEY		AMOUNT		KEY		AMOUNT	
B-4	Repairs	133	11	A-4	Repairs	150	05				
B-5	Coal	68	38	A-5	Water	16	74				
B-5	Water	92	07	A-5	Gas	28	80				
B-5	Gas	134	39	A-5	Electric	32	60				
B-5	Electricity	257	01	A-5	R. E. Taxes	277	50				
B-5	R. E. Taxes	162	80			355	64				
B-5	Insurance 1 yr	100	75								
B-5	Misc.	14	16								
		829	56								

11

Schedule F Explaination of Deduction for Depreciation Claimed in Schedule B

KEY	KIND of PROPERTY TYPE—CONSTRUCTION	DATE ACQUIRED	COST or OTHER BASIS	DEPRECIATION ALLOWED OR ALLOWABLE	ESTIMATED LIFE	PERCENT ALLOW-	DEPRECIATION ALLOWABLE

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3009488

ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW—
If husband and wife (not legally separated) file separate returns and one itemizes deductions, the other must also itemize

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.		Amount
Contributions		
	$	
Allowable Contributions (not in excess of 15 percent of item 6, page 1)		$
Interest		
	$	
Total Interest		
Taxes		
	$	
Total Taxes		
Losses from fire, storm, or other casualty, or theft.		
	$	
Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses		
	$	
Net Expenses (not compensated by insurance or otherwise)	$	
Enter 5 percent of item 6, page 1, and subtract from Net Expenses		
Allowable Medical and Dental Expenses. See Instructions for limitation		
Miscellaneous (See Instructions)		
	$	
Total Miscellaneous Deductions		
TOTAL DEDUCTIONS		$

M. L. Holland, 1948—Form 1040

Schedule C—Profit or Loss from Business or Profession
Item 17—Rent, Repairs and other expenses, to be itemized in Schedule G.

Item	Amount
Bar:	
Repairs	$ 216.22
Misc. Oper. Expense	25.75
Cafe:	
Repairs	742.52
Laundry	6,030.71
Pots and Pans	533.82
Glasses and Dishes	3,663.78
Misc. Oper. Expense	444.00
Hotel:	
Laundry and Cleaning	2,164.89
Repairs	2,845.86
Window Wash	135.00
Miscellaneous	60.68
Misc. Oper. Expense	415.23
General Expenses:	
Taxes	3,045.70
Water	1,072.38
Gas	1,317.51
Fuel	226.60
Electric Power	1,745.39
Rent	300.00
Interest	937.50
Telephone	934.01
Office Expense	874.21
Advertising	3,667.20
Ice	1,103.49
Transportation	120 35
Insurance	1,805.10
Garbage and Trash	183.00
Exterminating	118.00
Bank Charge	27.20
Miscellaneous	321.49
Light Bulbs	69.21
Locker and Storage Rent	42.80
Attorney Fees	72.20

Plumbing Repairs	777.64
Business Dues	35.50
Car Operating Expense	1,356.71
Flowers	67.93
Sales Tax (included in gross income)	3,666.43
Total	$41,176.01

Government's Exhibit E is an original invoice of the Southern Equipment Company bearing date of May 12, 1948 and showing the purchase of certain fixtures by the LaRay Hotel in the total sum of $8,042.06, and the payment thereof of July 12, 1948 of $7,965.06 and discount credit of $77.00.

Government's Exhibit F is an invoice of the Carson Crockery Company dated March 9, 1948, showing the sale of kitchenware and equipment to the LaRay Hotel in the amount of $85.68.

Government's Exhibit G is an invoice of the Carson Crockery Company dated March 15, 1948, showing the sale of kitchenware and equipment to the LaRay Hotel in the amount of $3,785.73.

Government's Exhibit H is an invoice of the Carson Crockery Company dated April 11, 1948, showing the sale of kitchen equipment to the LaRay Hotel in the amount of $412.03.

Government's Exhibit I is a Warranty Deed dated Jan. 16, 1948 from Elizabeth M. S. Davison to M. L. Holland reciting $10.00 and other good and valuable consideration and describing the land as the East One-Half (E ½) of the Southwest One-Quarter (SW ¼) and the West One-Half (W ½) of the Southeast One-Quarter (SE ¼) of Section Nine (9), Township Three South (T3S), Range Seventy West (R70W), Sixth (6th) .P. M.

Government's Exhibit J is a Deed of Trust dated Jan. 16, 1948 from M. L. Holland to Elizabeth M. S. Davison, securing a promissory note in the amount of $4,000.00 payable on or before August 1, 1948, the property being that described in a Warranty Deed, Exhibit I.

(To be used where inventories are an income-determining factor) (Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)			11. Salaries and wages not in line 4	$	
2. Inventory at beginning of year	$ 2,247	05	12. Interest on business indebtedness		
3. Merchandise bought for sale	119,199	94	13. Taxes on business and business property		
4. Labor			14. Losses (explain in Schedule G)		
5. Material and supplies			15. Bad debts arising from sales or services		
6. Other costs (explain in Schedule G)			16. Depreciation, obsolescence, and depletion (explain in Schedule F)	6,517	06
7. Total of lines 2 to 6	$ 121,446	99	17. Rent, repairs, and other expenses (explain in Schedule G)	41,176	01
8. Less inventory at end of year	2,460	00	18. Amortization of emergency facilities (attach statement)		
9. Net cost of goods sold (line 7 less line 8)	$ 118,986	99	19. Net operating loss deduction (attach statement)		
			20. Total of lines 11 to 19	$ 90,180	01
10. Gross profit (line 1 less line 9)	$		21. Total of lines 9 and 20	$ 209,167	00
			22. Net profit (or loss) (line 1 less line 21)		11,885 45

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.	Amount,	$
2. Name and address of estate or trust	Amount,	
3. Other sources (state nature)	Amount,	
4. Total		
Total income from above sources (Enter as item 5, page 1)		$ 11,211 42

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
See attached sheet		$	$	$	$			$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
See attached sheet		$			$

16—63063-2

B-4	Repairs		133	11	A-4	Repairs		150	05			
B-5	Coal		68	38	A-5	Water		16	74			
B-5	Water		92	07	A-5	Gas		28	80			
B-5	Gas		134	39	A-5	Electric		32	60			
B-5	Electricity		257	01	A-5	R. E. Taxes		277	50			
B-5	R. E. Taxes		162	80								
B-5	Insurance	1 yr	100	75								
B-5	Misc.		14	16								

Schedule F Explaination of Deduction for Depreciation Claimed in Schedule B

KEY	KIND of PROPERTY TYPE—CONSTRUCTION	DATE ACQUIRED	COST or OTHER BASIS	DEPRECIATION ALLOWED OR ALLOWABLE IN PRIOR YEARS	ESTIMATED LIFE	PERCENT ALLOWABLE THIS YEAR	DEPRECIATION ALLOWABLE THIS YEAR
A	Brick Apts.	10-1-46	5,000 00		50		100 00
A	Gas Conversion	8-16-48	815 00		15	4/12	18 12
B	Frame Apts.	8-5-47	6,000 00		40		150 00
B	Improvements	9-11-47	1,585 00		40		39 63
B	Gas Conversion	8-6-48	740 00		15	4/12	16 44
B	F & F - Blinds	9-17-47	84 93		5	3/12	16 98
		Schedule C Item 16					
	Brick Bldg.	4-1-46	40,000 00		40		1,000 00
	Insulating	7-10-47	829 00		12		69 08
	Storm Windows	12-4-47	1,426 80		50		23 53
	Gas Conversion	8-16-48	747 00		15		16 60
	Cementing Floor	9-10-48	575 00		50		3 84
	Equipment	1946	9,904 56		10		390 45
	Equipment	1947	5,169 79		10		516 96
	Equipment	6-19-48	1,676 44		10	2 1/2	83 82
	F. & F	1946	25,000 00		12		2,083 33

Medical and dental expenses

	$	
Net Expenses (not compensated by insurance or otherwise)	$	
Enter 5 percent of item 6, page 1, and subtract from Net Expenses		
Allowable Medical and Dental Expenses. See Instructions for limitation		

Miscellaneous (See Instructions)

	$	
Total Miscellaneous Deductions		
TOTAL DEDUCTIONS		$

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	$ 11,211	42
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $1,000 or 10 percent of line 1, above, whichever is the lesser, or $500 if this is the separate return of a married person)	1,000	00
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 10,211	42
4. Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here	1,800	00
5. Subtract line 4 from line 3. Enter difference here	$ 8,411	42

Lines 6, 7, and 8 should be filled in ONLY by a single person or a married person making a separate return

6. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 5 (if item 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	$	
7. If line 6 is (a) not over $400, enter 17% of amount on line 6		
(b) over $400 but not over $100,000, enter $68 plus 12% of the excess over $400		
(c) over $100,000, enter $12,020 plus 9.75% of the excess over $100,000		
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax	$	

Lines 9 to 13 should be filled in ONLY if this is a joint return of husband and wife

9. Enter here one-half of amount on line 5, above	$ 4,205	71 ✓
10. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 9 (if item 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	893	48 ✓
11. If line 10 is (a) not over $400, enter 17% of amount on line 10		
(b) over $400 but not over $100,000, enter $68 plus 12% of the excess over $400	127	92 ✓
(c) over $100,000, enter $12,020 plus 9.75% of the excess over $100,000		
12. Subtract line 11 from line 10. Enter the difference here	766	56 ✓
13. Multiply amount on line 12 by 2. Enter this tax here. This is your combined normal tax and surtax	$ 1,532	12 ✓
14. If alternative tax computation is made on separate Schedule D, enter here tax from line 12 on back of Schedule D	$	

If you used the standard deduction in line 2, disregard lines 15, 16, and 17, and copy on line 18 the same figure you entered on line 8, 13, or 14, whichever is applicable

15. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$	
16. Enter here any income tax paid at source on tax-free covenant bond interest		
17. Add the figures on lines 15 and 16 and enter the total here	$	
18. Subtract line 17 from line 8, 13, or 14, whichever is applicable. Enter difference here and in item 7, page 1. This is your tax.	$	

NAME HOLLAND, MARION L.

ADDRESS 715 E. DATA ST. [redacted]

LINES OF CREDIT

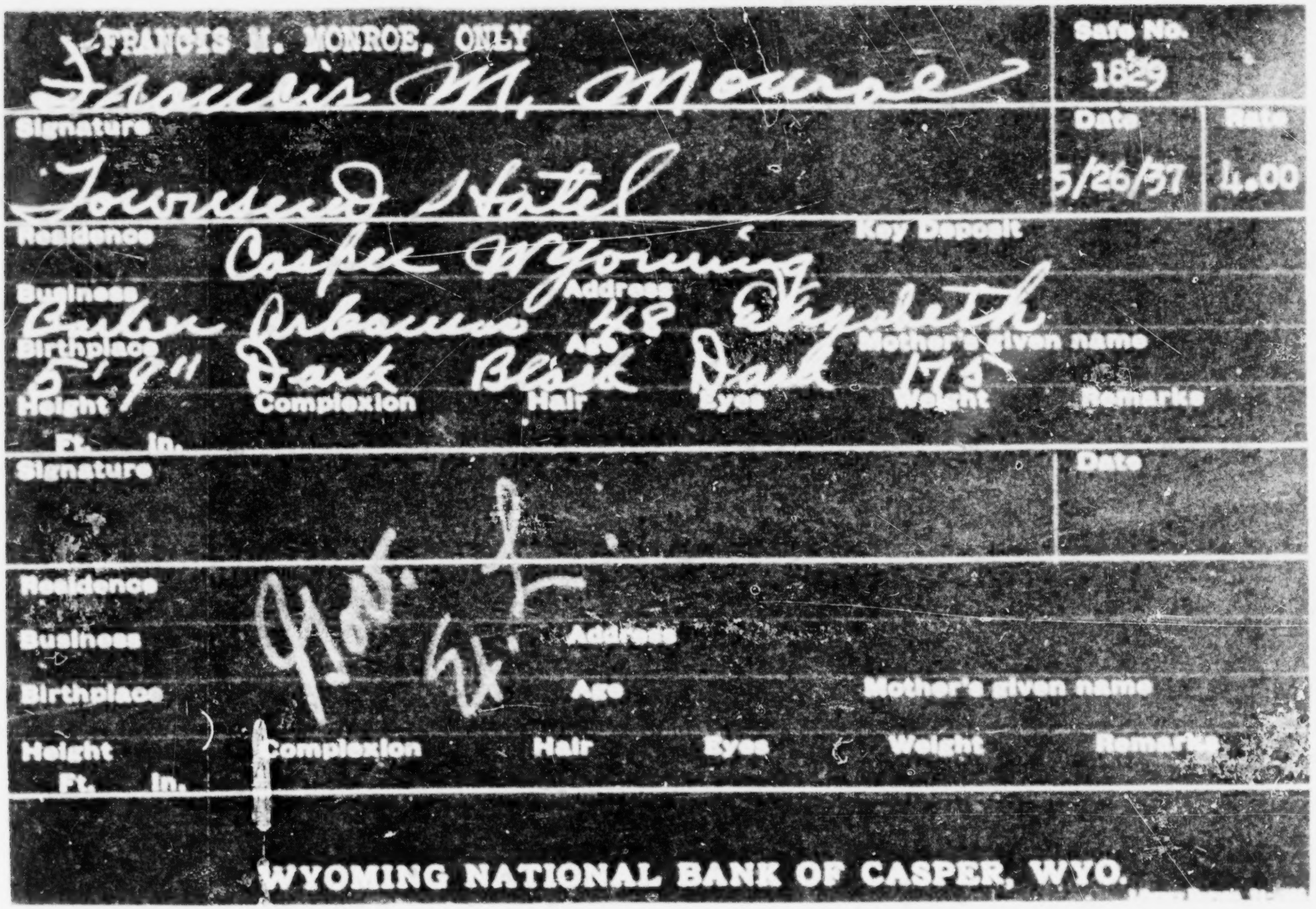
ENDORSER, CO-MAKER OR COLLATERAL		RATE	DATE OF NOTE	DATE DUE	NEW NUMBER	DEBITS	OLD NUMBER	CREDITS	DATE OF ENTRY
300 SH SO.PAC.CO. COM.		6	JAN-3 42	JAN-3 42	34	1,200.00			JAN 1 42
DO	DO	6	JAN-3 42	[illegible]-2 42	1,733	1,200.00	34	1,200.00	APR 1 42
							1,733	1,200.00	[illegible] 14 42
VAR.COLL.-ETHEL E.HOLLAND		6	MAY 27 42	AUG 25 42	2,704	2,500.00			MAY 27 42
DO	DO	6	JUL 31 42	OCT 29 42	3,893	3,500.00	2,704	2,500.00	JUL 31 42
							3,893	150.00	SEP 17 42
DO	DO	6	NOV-5 42	FEB-3 43	5,353	3,350.00	3,893	3,350.00	NOV 6 42
DO	DO	6	FEB-3 43	MAY-4 43	6,591	3,350.00	5,353	3,350.00	FEB 3 43
DO	DO	6	MAY-4 43	AUG-2 43	7,692	2,500.00	6,591	3,350.00	MAY 1 43
							7,692	2,321.24	JUL 14 43
DO		6	JUL 22 43	OCT 20 43	8,709	3,032.78	8,709	1,032.78	
							7,692	178.76	JUL 27 43
DO	DO	6	JUL 28 43	OCT 26 43	8,726	2,218.25			JUL 28 43
							8,726	1,018.25	OCT 13 43
							8,709	2,000.00	
DO	DO	6	OCT 20 43	JAN [illegible] 44	9,771	3,200.00	8,726	1,200.00	OCT 20 43
							9,771	500.00	NOV 4 43
							9,771	2,700.00	NOV 17 43
DO	DO	6	DEC 21 43	MAR 20 44	10,653	5,544.60			DEC 21 43
DO	DO	5	MAR-6 44	MAR 20 44	11,620	2,168.13			MAR 6 44
DO		5	MAR-6 44	JAN-5 44	11,659	7,000.00	10,653	5,544.60	
							11,620	2,168.13	MAR 10 44
DO	Gen'l D [illegible] COUNTY	5	JAN-5 44	SEP-5 44	12,743	7,000.00	11,659	7,000.00	JAN 5 44
DO		5	SEP-5 44	DEC-4 44	13,777	7,000.00	12,743	7,000.00	SEP 5 44
DO	MAR 2 '53	5	NOV-8 44	FEB-6 45	14,563	4,722.35			NOV 8 44
DO		5	DEC-4 44	MAR-4 45	14,931	7,000.00	13,777	7,000.00	DEC 8 44
DO	13188	5	FEB-6 45	MAY-7 45	15,600	4,722.35	14,563	4,722.35	FEB 6 45
DO		5	MAR-4 45	JAN-2 45	15,881	7,000.00	14,931	7,000.00	MAR 5 45
DO	53	5	MAY-1 45	JUL 30 45	16,530	11,703.84	15,600	4,722.35	
							15,881	7,000.00	MAY 7 45
DO		5	JUL 30 45	OCT 29 45	17,622	11,703.84	16,530	11,703.84	JUL 30 45
							17,622	11,703.84	NOV 1 45
DO		5	OCT 30 45	JAN 29 46	18,863	11,703.84			NOV 1 45
DO		5	NOV 29 45	FEB 28 46	20,246	11,703.84	18,863	11,703.84	NOV 29 45
							20,246	11,703.84	FEB 5 46
							20,246	500.00	FEB 27 46

ARKSON
XXXXXXX.

LINES OF CREDIT

CW MBER	DEBITS	OLD NUMBER	CREDITS	DATE OF ENTRY	BALANCE
34	1,200.00			JAN 1 42	1,200.00 ✱
30	1,200.00	34	1,200.00	APR 1 42	1,200.00 ✱
		1,730	1,200.00	APR 16 42	.00 ✱
704	2,500.00			MAY 21 42	2,500.00 ✱
093	3,500.00	2,704	2,500.00	JUN 21 42	3,500.00 ✱
		3,893	150.00	SEP 12 42	3,350.00 ✱
558	3,350.00	3,893	3,350.00	NOV 6 42	3,350.00 ✱
591	3,350.00	3,358	3,350.00	FEB 1 43	3,350.00 ✱
092	2,500.00	6,591	3,350.00	MAY 1 43	2,500.00 ✱
		7,692	2,321.24	JUL 16 43	178.76 ✱
709	3,032.78	8,709	1,032.78		
		7,692	178.76	JUL 27 43	2,000.00 ✱
726	2,218.25			JUL 28 43	4,218.25 ✱
		8,726	1,018.25	OCT 12 43	3,200.00 ✱
		8,709	2,000.00		
771	3,200.00	8,725	1,200.00	OCT 20 43	3,200.00 ✱
		9,771	500.00	NOV 6 43	2,700.00 ✱
		9,771	2,700.00	NOV 11 43	.00 ✱
553	5,544.60			DEC 21 43	5,544.60 ✱
620	2,168.13			MAR 6 44	7,712.73 ✱
659	7,000.00	10,655	5,544.60		
		11,620	2,168.13	MAR 10 44	7,000.00 ✱
743	7,000.00	11,659	7,000.00	JUN 5 44	7,000.00 ✱
772	7,000.00	12,743	7,000.00	SEP 5 44	7,000.00 ✱
863	4,722.35			NOV 8 44	11,722.35 ✱
931	7,000.00	13,777	7,000.00	DEC 8 44	11,722.35 ✱
500	4,722.35	14,563	4,722.35	FEB 6 45	11,722.35 ✱
981	7,000.00	14,931	7,000.00	MAR 5 45	11,722.35 ✱
30	11,703.84	15,600	4,722.35		
		15,881	7,000.00	MAY 1 45	11,703.84 ✱
822	11,703.84	16,530	11,703.84	JUL 30 45	11,703.84 ✱
		17,622	11,703.84	NOV 1 45	.00 ✱
163	11,703.84			NOV 1 45	11,703.84 ✱
745	11,703.84	18,060	11,703.84	JAN 29 46	11,703.84 ✱
		20,245	11,203.84	FEB 6 46	500.00 ✱
		20,245	500.00	MAR 27 46	.00 ✱

Government's Exhibit K is a Release of the Deed of Trust, Exhibit J, dated August 4, 1948, from the Public Trustee to M. L. Holland and signed by Elizabeth M. S. Davison.



Lower portion of this page is in following frame.

— Cameraman

Casper, Wyo., May 26th 1917

THE WYOMING NATIONAL BANK OF CASPER, has leased to Jno.

Safe No. 1829 in the vaults of said The Wyoming National Bank of Casper, such letting being subject to the rules and conditions printed on the receipt given and on the several receipts which may from time to time be given by said Bank, to which rules and conditions I hereby agree and which rules and conditions are hereby made a part of this contract. It is agreed that either or any of us shall have the right of access to said safe and to remove its contents. As joint tenants the survivor or survivors to have access thereto in case of death of either. It is expressly understood, however, that in the event of the death of the renter, or of one of two or more joint renters, access shall be had to the safe only in compliance with the laws of the State of Wyoming:

Any one of us shall have the power to appoint a deputy or the right to surrender the safe.

We hereby acknowledge to have received 2 keys, or combination, to said safe.

Witness: Chas. L. Cooper

Jno. W. Monroe

Casper, Wyo., May 1st 1919

I hereby acknowledge that all property stored in the vaults of THE WYOMING NATIONAL BANK OF CASPER, pursuant to the above contract and the extensions and renewals thereof, has been safely withdrawn therefrom and all liability of said Bank therefore is hereby accordingly released.

I hereby acknowledge to have received refund of $ deposit on keys.

RD

Jno. W. Monroe

Governments' Exhibit M.

Open Day and Night

Holland's Pine Grove Cafe.
1732 Welton Street

Denver, Colo., Sept. 7, 1929

Rockwell Investment Company, 501 California Building, Denver, Colorado.

Gentlemen:

In answer to your letter of the 6th in reference to the reduction of rent for another year on my Annex in the Moose Building.

Your refusal to cooperate with me in the position which I am in at the present time, just means one thing insofar as I can help myself—this is bankruptcy and financial ruin.

As to which, if any, of the obligations mentioned to you in my letter of September 4th, takes precedence over the other, is not a matter for me to be interested in at this time. My problem is how to satisfy the mortgagee and avoid disturbance of other creditors. This cannot be done at the present time unless I am successful in getting a continuation of the present reduction of rent for another year.

Mr. Ed Grimes, my landlord in the main Cafe, has shown me every consideration requested of him, and is cooperating with me by reducing my rent $100.00 per month.

I cannot see where it would be good business on your part to force me into bankruptcy, which court action of any kind would do at this time. The continuation of the present reduction in rent for another year is only reasonable and fair. It will avoid disturbances, save my credit and give me a chance to get rid of this mortgage and make you a better tenant for the next three years.

Your basement lease to the News hinges upon the present lease between Mr. Grimes and myself, as your lease of my basement is a sub-lease depending upon the original lease.

As a matter of good business, I am asking you to recon-

sider your late decision, make a thorough investigation of the true facts of the financial condition of both myself and the Holland Cafe Company and comply with my request for the mutual benefit of us all.

Yours very truly,

M. L. HOLLAND,
The Holland Cafe Company.

Governments' Exhibit N.

Open Day and Night

Holland's Pine Grove Cafe.
1732 Welton Street

Denver, Colo., April 26, 1929

Electrical Products Corporation, 680 South Broadway, Denver, Colorado.

Gentlemen:

In answer to your letter of the 26th, I regret very much to advise you I am not in the necessary financial condition to argue the question of your attitude of fairness or willingness to help me remain in business.

In spite of everything I have been able to do, I have been going from bad to worse for the past year, and it will only be a matter of such time as some creditor sues me that I will be here.

I have always felt you would do this sooner or later, as one of the first remarks your collector made to me when I was unable to pay promptly was to the extent that you would or could sue me for the full amount of the three years lease.

You would just as well do this now as later, as I see the general outlook for better business.

The Holland Cafe Co.
BY M. L. HOLLAND.

P.271

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF [redacted] OF INTERNAL REVENUE
Director
DISTRICT OF Colorado

In re: Marion L. and Ethel Holland
(Name of taxpayer)

(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to income tax

(Character of tax)

for the years 1913 to 1920, inclusive.

(Period covered)

1. Taxable Period	2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed	PAID, ABATED, OR CREDITED		7. Paid Ab. Cr.	8. Adjustment of Overassessments
				5. Date or Schedule No.	6. Amount		
1913	No record						
1914	No record						
1915	No record						
1916	No record						
1917	No record						
1918	No record						
1919	No record						
1920	Coll. 1921	NI 16826	- Non-taxable.	Filed by	M. L. Holland, 210 Fox St., Denver, Colo.		
1921	Coll. 1922	NI 29674	- Non-taxable.	Filed by	Marion L. Holland, Denver, Colorado.		126 W. Irvington,

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Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF ~~COLLECTOR~~ Director OF INTERNAL REVENUE

DISTRICT OF Colorado

In re: Marion L. and Ethel Holland
(Name of taxpayer)

(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to income tax
(Character of tax)
for the years 1913 to 1940, inclusive.
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED		7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
				5. DATE OR SCHEDULE NO.	6. AMOUNT		
1934	No record						
1935	No record						
1936	No record						
1937	No record						
1938	No record						
1939	No record						
1940	No record						

Govt EXHIBIT R

MAR 3 '53

CASE NO. 13188

Governments' Exhibit O.

Open Day and Night

Holland's Pine Grove Cafe
1732 Welton Street

Denver, Colo., Dec. 5th, 1928.

Electrical Products Corporation, Denver, Colorado

Gentlemen:

In reply to your letter of the 4th, with reference to our conversation in your office a few days ago.

You are the only creditor I have who has not been more than willing to cooperate with me to the very letter of my suggestions.

All the rest of my creditors were glad to help me, simply because I did not ask anything any more unreasonable of them than I did of you.

I have gotten full cooperation from every one, from my Landlord on down. In fact they have given me every thing I ask for.

Now I have not ask anything unreasonable of you in requesting you to cancel this "Dance" sign contract.

If you consider it good business on your part to force the terms of the contract, under the circumstances, as you say it is your usual procedure to do, I am sure I can't stop you.

Of course you know what it means for me when you start such suit. It simply means I am thru, as the mortagee will no doubt close me out.

When I signed this contract I did so in good faith and have tried my very best—working day and night to get by. Now if you want to put me out of business, it is your privilege, as I will realize it happens to be your position to do.

You say you have not gotten your cost in rentals out of this sign. I have lost many thousand dollars since signing your contract—your loss will be a mere trifle in comparison to what mine now is.

My loss will be even greater when you start this suit. It will be a complete loss for me. It means my $60,000.00 capital investment which is everything I have in the world.

It is up to you Gentlemen to do as you see fit. I am in no position to defend myself.

Yours very truly,

M. L. HOLLAND.

Government's Exhibit P

Open Day and Night.

Holland's Pine Grove Cafe.
1732 Welton Street.

Denver, Colo., Aug. 29, 1929

Electrical Products Corporation, 680 South Broadway, Denver, Colo.

Gentlemen: At last, I am getting back on my feet again, will be in a position to make you a substantial payment in about ten days.

Thanking you kindly, I am

Yours very truly,

M. L. HOLLAND.

MICRO

TRADE

CARD

MARK ®

4331

MATTHEW BENDER & COMPANY

MB

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1. Taxable Period	2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed	5. Date or Schedule No.	6. Amount	7. Paid Ab. Cr.	8. Adjustment of Overassessments
1913	No record						
1914	No record						
1915	No record						
1916	No record						
1917	No record						
1918	No record						
1919	No record						
1920	Coll. 1921	NI 16826	- Non-taxable.	Filed by M. L. Holland, 210 Fox St., Denver, Colo.			
1921	Coll. 1922	NI 29674	- Non-taxable.	Filed by Marion L. Holland, 126 W. Irvington, Denver, Colorado.			
1922	No record						
1923	No record						
1924	No record						
1925	No record						
1926	Coll. 1927	701765 NI	- Non-taxable.	Filed by M. L. Holland, 304 Emerson, Denver, Colorado.			
1927	No record						
1928	No record						
1929	No record						
1930	No record						
1931	No record						
1932	No record						
1933	No record						

Govt EXHIBIT Q

MAR 3 53

CASE NO. 13188

(CONTINUED ON PAGE 2)

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated; and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein, and that I have legal custody of the records and that diligent search has been made and no other record of the taxpayer has been found in the office indicated. Witness my hand.

Date of certificate March 3, 1953.

Director of Internal Revenue.

U. S. GOVERNMENT PRINTING OFFICE 16—13009

(See instructions on reverse side)

CMS

1. Taxable Period	2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed	5. Date or Schedule No.	6. Amount	7. Paid Ab. Cr.	8. Adjustment of Overassessments
1934	No record						
1935	No record						
1936	No record						
1937	No record						
1938	No record						
1939	No record						
1940	No record						

Govt EXHIBIT R

MAR 3 '53

JSE NO. 13188

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein. and that I have legal custody of the records and that diligent search has been made of said records, ~~and found no indication in the~~ in the instances indicated above

Date of certificate March 3, 1953.

Director of Internal Revenue.

(See instructions on reverse side)

☆ U. S. GOVERNMENT PRINTING OFFICE 16—13009

CMS

Director

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF ~~COLLECTOR~~ Director OF INTERNAL REVENUE

In re: Holland Cafe
(Name of taxpayer)

DISTRICT OF Colorado

(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to Income tax
(Character of tax)
for the years 1926 to 1934 inclusive.
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED		7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
				5. DATE OR SCHEDULE NO.	6. AMOUNT		
1926	Coll. 1927	850787 -	Non-taxable				
1927	Coll. 1928	850669 -	Non-taxable				
1928	Coll. 1929	853066 -	Non-taxable				
1929	Coll. 1930	853559 -	Non-taxable				
1930	Coll. 1931	852876 -	Non-taxable				

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF Director OF INTERNAL REVENUE

In re: Pine Grove Cafe
(Name of taxpayer)

DISTRICT OF Colorado

(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to income tax
(Character of tax)

for the years 1930 to 1934, inclusive
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED 5. DATE OR SCHEDULE NO.	PAID, ABATED, OR CREDITED 6. AMOUNT	7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
1930	No record						
1931	Coll. 1932	854755 -	Non-taxable				
1932	Coll. 1933	855616 -	Non-taxable				
1933	No record						
1934	No record						

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Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF ~~COLLECTOR~~ Director OF INTERNAL REVENUE

DISTRICT OF Colorado

In re: Rocky Mountain Restaurant Company
(Name of taxpayer)

(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to income tax
(Character of tax)

for the years 1932 to 1934, inclusive.
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED		7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
				5. DATE OR SCHEDULE NO.	6. AMOUNT		
1932	Coll. 1933	855657-NC	- Non-taxable.				
1933	No record						
1934	No record						

Govt EXHIBIT V

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

COPY

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

DIRECTOR

OFFICE OF COLLECTOR OF INTERNAL REVENUE

In re: H. L. Holland
(Name of taxpayer)

DISTRICT OF Wyoming

405 Colorado Building
Casper, Wyoming
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

Internal Revenue Service, Intelligence Unit, Denver, Colorado
Attention: Mr. George G. Fuller, Special Agent
(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to Income
(Character of tax)

for the 1933 - 1937
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED: 5. DATE OR SCHEDULE NO.	PAID, ABATED, OR CREDITED: 6. AMOUNT	7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
1933		No record		11			
1934		No record					
1935	Coll	Mar	16 12				
	1938	20607	Pen 4 03	3-21-38	16 12	Pd	
			Int 2 11	7-8-38	6 14	Pd	
1936	Coll	Mar	24 04				
	1938	20608	Pen 6 01	3-21-38	24 04	Pd	
			Int 1 43	7-8-38	7 44	Pd	
1937		66857 MI	Non-tax				

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

COPY

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF COLLECTOR OF INTERNAL REVENUE
DIRECTOR

In re: M. L. & Ethel Holland
Hotel Townsend (Name of taxpayer)
Casper, Wyoming
(Address)

DISTRICT OF Wyoming

TO THE COMMISSIONER OF INTERNAL REVENUE:

ATTENTION:

Internal Revenue Service, Intelligence Unit, Denver Colorado
(Refer to symbols and date of letter requesting this certification)
Attention: Mr. George C. Bodley, Sp. Agt.

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to Income
(Character of tax)
for the 1938 and 1939
(Period covered)

1. TAXABLE PERIOD	2. LIST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED		7. PAID AB. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
				5. DATE OR SCHEDULE NO.	6. AMOUNT		
1938	Coll 1939	25644	30 44	3-25-39 6-6-39 9-11-39 12-12-39	7 61 7 61 7 61 7 61	Pd Pd Pd Pd	
1939	Coll 1940	250637	26 64	3-27-40 6-15-40 9-12-40 12-12-40	6 66 6 66 6 66 6 66	Pd Pd Pd Pd	

Form 899
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

COPY

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

OFFICE OF ~~COLLECTOR~~ DIRECTOR OF INTERNAL REVENUE

DISTRICT OF _____

In re: Marion L. & Ethel E. Holland
(Name of taxpayer)
Townsend Hotel
Casper, Wyoming
(Address)

TO THE COMMISSIONER OF INTERNAL REVENUE:
ATTENTION:
Internal Revenue Service, Intelligence Unit, Denver, Colo
(Refer to symbols and date of letter requesting this certification)
Attention: Mr. George C. Dudley, Special Agent

The following is a transcript of the records of this office covering the accounts of the taxpayer named above in respect to Income
(Character of tax)
for the 1940 and 1941
(Period covered)

1. Taxable Period	2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed		PAID, ABATED, OR CREDITED 5. Date or Schedule No.	6. Amount		7. Paid Ab. Cr.	8. Adjustment of Overassessments
1940	Coll	25813	46	59	4-4-41	11	65	Pd	
	1941				6-17-41	11	65	Pd	
					9-16-41	11	65	Pd	
					12-12-41	11	64	Pd	
1941		No record							

ABLE PERIOD	Year	Page and Line	4. Amount Assessed	5. Date or Schedule No.	6. Amount	Ab. Cr.	Overassessments
1926	Coll. 1927	850787 -	Non-taxable				
1927	Coll. 1928	850669 -	Non-taxable				
1928	Coll. 1929	853066 -	Non-taxable				
1929	Coll. 1930	853559 -	Non-taxable				
1930	Coll. 1931	852876 -	Non-taxable				
1931	No record						
1932	No record						
1933	No record						
1934	No record						

Govt EXHIBIT 1

MAR 4 53

CASE NO. 13188

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein, and that I have legal custody of the records, and that diligent search has been made of said records, and no record or entry has been found except as shown in the instances indicated above.

Date of certificate March 4, 1953, 19

Collector of Internal Revenue.

Director

☆ U. S. GOVERNMENT PRINTING OFFICE 16—13009

(See instructions on reverse side)

rc

PERIOD				SCHEDULE NO.	AMOUNT			
1930	No record							
1931	Coll. 1932	854755 -	Non-taxable					
1932	Coll. 1933	855616 -	Non-taxable					
1933	No record							
1934	No record							

11

Kent EXHIBIT U

MAR 4 53

CASE NO. 13186

R5

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein, and that I have legal custody of the records, and that diligent search has been made of said records, and no record or entry has been found except as shown in the instances indicated above.

Date of certificate March 4, 1953

Collector of Internal Revenue.
Director

U. S. GOVERNMENT PRINTING OFFICE 16—13009

(See instructions on reverse side)

Period	Year	Page and Line		5. Date or Schedule No.	6. Amount	Ab. & S.	Overassessments
1932	Coll. 1933	855657-NC	- Non-taxable.				
1933	No record						
1934	No record						

Govt. EXHIBIT V

MAR 4 53

13188 85

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein, and that I have legal custody of the records, and that diligent search has been made of said records, and no record or entry has been found except as shown in the instances indicated above.

Date of certificate March 4, 1953.

Director

☆ U. S. GOVERNMENT PRINTING OFFICE 16—13000

(See instructions on reverse side)

CHS

PERIOD					5. DATE OR SCHEDULE NO.	6. AMOUNT			
1933		No record			11				
1934		No record							
1935	Coll	Mar		16 12					
	1938	20607	Pen	4 03	3-21-38	16	12	Pd	
			Int	2 11	7-8-38	6	14	Pd	
1936	Coll	Mar		24 04					
	1938	20608	Pen	6 01	3-21-38	24	04	Pd	
			Int	1 43	7-8-38	7	44	Pd	
1937		66857 NI	Non-tax						

Govt EXHIBIT W

MAR 4 53

CASE NO. 6188

I have legal custody of the official records of the office of the U. S. Bureau of Internal Revenue for the State of Wyoming; that

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein; that after diligent search no record or entry appears therein, except as above indicated.

Date of certificate March 4, 1953

Collector of Internal Revenue.

JOHNSEN
DIRECTOR

U. S. GOVERNMENT PRINTING OFFICE 16—13009

(See instructions on reverse side)

1. Taxable Period	2. List and Year	3. Acct. No. or Page and Line	4. Amount Assessed	5. Date or Schedule No.	6. Amount	7. Paid Ab. Cr.	8. Adjustment of Overassessments
1938	Coll 1939	25644	30 44	3-25-39	7 61	Pd	
				6-6-39	7 61	Pd	
				9-11-39	7 61	Pd	
				12-12-39	7 61	Pd	
1939	Coll 1940	250637	26 64	3-27-40	6 66	Pd	
				6-15-40	6 66	Pd	
				9-12-40	6 66	Pd	
				12-12-40	6 66	Pd	

Govt EXHIBIT X

MAR 4 53

CASE NO. 13156

I have legal custody of the official records of the U. S. Bureau of Internal Revenue for the State of Wyoming; that

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein; that after diligent search no record or entry appears therein except as above indicated.

Date of certificate March 4, **19**53

Frank E. Barry

Collector of Internal Revenue.

Director

U. S. GOVERNMENT PRINTING OFFICE 16—13009

(See instructions on reverse side)

PERIOD	[illegible]	[illegible]			5. DATE OR SCHEDULE NO.	6. AMOUNT		AB. CR.	OVERASSESSMENTS
1940	Coll 1941	25813	46	59	4-4-41	11	65	Pd	
					6-17-41	11	65	Pd	
					9-16-41	11	65	Pd	
					12-12-41	11	64	Pd	
1941		No record			"				

Govt Exhibit Y

MAR 4 53

CASE NO. 13188

I have legal custody of the official records of the U. S. Bureau of Internal Revenue for the State of Wyoming; that

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein; that after diligent search no record or entry appears therein, except as above indicated.

Date of certificate March 4, 19 53

Frank E. Flaherty

Collector of Internal Revenue.
Director

U. S. GOVERNMENT PRINTING OFFICE 16—12009

(See instructions on reverse side)

P. 287

File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (item 8, below) must be paid in full with return. See separate Instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1944

1944

AUDITED
16074
1756
178.30
CC
Deputy Collector

or fiscal year beginning Jan 1, 1944, and ending Jan 1, 1945

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W–2 (Rev.), as your return, if your total income was less than $5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

File Code

Serial No. 2018283

District

(Cashier's Stamp)
Govt EXHIBIT 2

NAME MARION L. and ETHEL E. HOLLAND
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS 715 North 29th, Apt #3
(PLEASE PRINT. Street and number or rural route)

Billings, Montana
(City or town, postal zone number) (State)

Social Security No. (if any) 520-10-1040 521-01-0197

MAR 4 53

1-27-47

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives with 1944 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your Exemptions

NAME (Please print)	Relationship	NAME (Please print)	Relationship
Your name Marion L. Holland	x x x x x x x x x		
Ethel E. Holland	Wife		

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT	
Al's Steak House	Billings, Montana	$ 2,834	00
Fox Theatre	" "	62.27 722	27

Enter total here → $ 3,556 | 27

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) 1,600 | 00

4. If you received any other income, give details on page 3 and enter the total here 5,156 | 27

5. Add amounts in items 2, 3, and 4, and enter the total here $

P.289

Do not itemize deductions if—(1) You determine your tax from the tax table on page 2, or
(2) Your total income is $5,000 or more and you claim the $500 standard deduction.
If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

	Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return		Amount
Contributions		$	
	Allowable Contributions (not in excess of 15 percent of item 5, page 1)		$
Interest		$	
	Total Interest		
Taxes		$	
	Total Taxes		
Losses from fire, storm, shipwreck, or other casualty, or theft		$	
	Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses		$	
	Net Expenses (not compensated by insurance or otherwise)	$	
	Enter 5 percent of item 5, page 1, and subtract from Net Expenses		
	Allowable Medical and Dental Expenses. See Instruction for limitation		
Miscellaneous (including [illegible] insurance)		$	

P. 291

Page 1

File this return with Collector of Internal Revenue on or before March 15, 1946. Any balance of tax due (item 8, below) must be paid in full with return. See separate Instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1945

1945

AA
Govt EXHIBIT 315
MAR 4 53
13188

or fiscal year beginning _____, 1945, and ending _____, 1946

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2, as your return, if your total income was less than $5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces

File Code 8 M

Serial No. 3000562

District Montana

(Cashier's Stamp)

NAME M. L. Holland & Ethel E. Holland
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS 321 Fox Street (temporary) *
(PLEASE PRINT. Street and number or rural route)

Denver 9 Denver Colo.
(City or town, postal zone number) (County) (State)

Occupation Unemployed Social Security No. _____

Your Exemptions

List your own name.
If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in Instruction 1) with 1945 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

1.	Name (please print)	Relationship	Name (please print)	Relationship
Your name	M. L. Holland	x x x x x x x x x		
	Ethel E. Holland			

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1945, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

2.	Print Employer's Name	Where Employed (City and State)	Amount
	J & Q's Coffee Shop	Billings Mont	$ 708 50

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— Cameraman

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1945, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

Your Income

2. Print Employer's Name	Where Employed (City and State)	Amount	
M2 Q's Coffee Shop	Billings, Mont	$ 708	50
Ja Ray Hook	Golden, Colo	4,221	42
E41 Fox Theatre	Billings, Mont	325	00
	Enter total here →		$ 5254 | 92

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) ..... 1850 | 00

4. If you received any other income, give details on page 2 and enter the total here .....

5. Add amounts in items 2, 3, and 4, and enter the total here ..... $ 7104 | 92

If item 5 includes incomes of both husband and wife, show husband's income here, $ 4929.92; wife's income here, $ 325.00

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of $500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

6. Enter your tax from table on page 4, or from line 15, page 3 ..... $ 1360 | 67

7. How much have you paid on your 1945 income tax?

(A) By withholding from your wages	$ 976	35
(B) By payments on 1945 Declaration of Estimated Tax	82	32
Enter total here →		1058 | 67

8. If your tax (item 6) is larger than payments (item 7), enter **BALANCE OF TAX DUE** here ..... $ 302 | 00

9. If your payments (item 7) are larger than your tax (item 6), enter the **OVERPAYMENT** here .. $

Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1946 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1945 Est.

To which Collector's office was it sent? Helena, Mont.

To which Collector's office did you pay amount claimed in item 7 (B), above? " "

Is your wife (or husband) making a separate return for 1945? No ("Yes" or "No")

If "Yes," write below:

Name of wife (or husband) —

Collector's office to which sent —

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date)

Marion L. Holland 1/11/46
(Signature of taxpayer) (Date)

(Name of firm or employer, if any)

Ethel E. Holland
(If this is a joint return of husband and wife, it must be signed by both)

13—48787-1

* Former address — 715 No 29 — Billings, Montana

Do not itemize deductions if—(1) You determine your tax from the tax table on page 4, or
(2) Your total income is $5,000 or more and you claim the $500 standard deduction.
If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

			Amount	
Contributions	Red Cross, War Chest, March of Dimes	$		
	First Church of Christ Scientist Building			
	Second " " " " Denver			
	Allowable Contributions (not in excess of 15 percent of item 5, page 1)		$ 55	00
Interest	W. D. Nat'l Bank Denver	$ 6 00	OR	
	New York Life Ins. Co.	31	00	
	Total Interest		631	00
Taxes	Montana State Income Tax	$ 18	73	
	Gasoline Tax	26	68	
	Colo. Sales Tax	10	00	
	Total Taxes		55	41
Losses from fire, storm, shipwreck, or other casualty, or theft.		$		
	Total Allowable Losses (not compensated by insurance or otherwise)			
Medical and dental expenses		$		
	Net Expenses (not compensated by insurance or otherwise)	$		

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following frame.

— Cameraman

storm, shipwreck, or other casualty, or theft.					
	Total Allowable Losses (not compensated by insurance or otherwise)				
Medical and dental expenses		$			
	Net Expenses (not compensated by insurance or otherwise)	$			
	Enter 5 percent of item 5, page 1, and subtract from Net Expenses				
	Allowable Medical and Dental Expenses. See Instruction for limitation				
Miscellaneous (See Instructions)		$			
	Total Miscellaneous Deductions				
	TOTAL DEDUCTIONS			$	741 41

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income	$	7104	92	
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $500)		741	41	
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$	6363	51	
4. Enter your Normal-Tax Exemption ($500 if return includes income of only one person; otherwise see Tax Computation Instructions)		825	00	
5. Subtract line 4 from line 3. Enter the difference here. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	$	5538	51	
6. Enter here 3 percent of line 5. This is your Normal Tax. (Figure your Surtax below and enter in line 10)				$ 166 16
7. Copy the figure you entered on line 3, above	$	6363	51	
8. Enter your Surtax Exemptions ($500 for each person listed in item 1, page 1)		1000	00	
9. Subtract line 8 from line 7. Enter the difference here. This is your Surtax Net Income	$	5363	51	
10. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 9. Enter the amount here				1194 51
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D)				$ 1360 67
If you used the $500 standard deduction in line 2, disregard lines 12, 13, and 14, and copy on line 15 the same figure you entered on line 11				
12. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$			
13. Enter here any income tax paid at source on tax-free covenant bond interest				
14. Add the figures on lines 12 and 13 and enter the total here				
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax				$ 1360 67

Ethel E. Holland Wife			

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT	
Elg Steak House	Billings, Montana	$ 2,834	00
Fox Theatre	" "	662 27 722	27
	Enter total here →		$ 3,556 27

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) 1,600 00

4. If you received any other income, give details on page 3 and enter the total here 5,156 27

5. Add amounts in items 2, 3, and 4, and enter the total here ..... $

If item 5 includes income of both husband and wife, show husband's income here, $ 4434.00; wife's income here, $ 722.27

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as are used in the Tax Computation on page 4. The table automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and compute your tax on page 4. You may either take a standard deduction of $500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

6. Enter your tax from table on page 2, or from line 15, page 4 ..... $ 874 06

7. How much have you paid on your 1944 income tax?

(A) By withholding from your wages (Attach Withholding Receipts, Form W-2) ..... $ 444 65 468 87 ? 508 11

(B) By payments on 1944 Declaration of Estimated Tax 24 199 93 608 85

Enter total here →

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here ..... 365 $ 265 21

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here ..... $

Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1945 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1944-Est.

To which Collector's office was it sent? Helena

To which Collector's office did you pay amount claimed in item 7 (B), above? Helena

Is your wife (or husband) making a separate return for 1944? No ("Yes" or "No")

If "Yes," write below:

Name of wife (or husband) Included here

Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date)

Marion L. Holland
(Signature of taxpayer) (Date)

(Name of firm or employer, if any)

Ethel E. Holland
(If this is a joint return of husband and wife, it must be signed by both)

(SEE TAX TABLE BELOW)

16—41002-1

	Total Taxes				
Losses from fire, storm, shipwreck, or other casualty, or theft		$			
	Total Allowable Losses (not compensated by insurance or otherwise)				
Medical and dental expenses		$			
	Net Expenses (not compensated by insurance or otherwise)	$			
	Enter 5 percent of item 5, page 1, and subtract from Net Expenses				
	Allowable Medical and Dental Expenses. See Instruction for limitation				
Miscellaneous (including alimony, amortizable bond premium, special deduction for the blind, etc.)		$			
	Total Miscellaneous Deductions				
	TOTAL DEDUCTIONS			$	

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 2

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income	$ 5,156.	27
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $500)	500.	00
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 4,656.	27
4. Enter your Surtax Exemptions ($500 for each person listed in item 1, page 1)	1,000.	00
5. Subtract line 4 from line 3. Enter the difference here. This is your Surtax Net Income	$ 3,656.	27
6. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 5. Enter the amount here	$ 764.	38
7. Copy the figure you entered on line 3, above. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	$ 4,656.	27
8. Enter your Normal-Tax Exemption ($500 if return includes income of only one person; otherwise see Tax Computation Instructions)	1,000.	00
9. Subtract line 8 from line 7, and enter the difference here	$ 3,656.	27
10. Enter here 3 percent of line 9. This is your Normal Tax	$ 109.	68
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D)	$ 874.	06
If you used the $500 standard deduction in line 2, disregard lines 12, 13, & 14, and copy on line 15 the same figure you entered on line 11		
12. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$	
13. Enter here any income tax paid at source on tax-free covenant bond interest		
14. Add the figures on lines 12 and 13 and enter the total here		
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax	$	

U. S. GOVERNMENT PRINTING OFFICE : 1944 16—41002-1

Form 25A
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised March 1922)

Gov. Ex. BB

ASSESSMENT LIST

1040 BUR - FP

Page No. 300056

District MONTANA, List JUNE 1946 CURR LIST

		OLD BALANCE	DATE	DEBIT	CREDIT	NEW BALANCE	REMARKS
1 0	ALFONSO & GERTRUDE MATTINGLY 2605 WALNUT BUTTE MONT 3000560 0644 357 40		1-21-46	277 42	277 42		★ 0
1	WALTER G RAPP 1905 WHITMAN BUTTE MONT 3000561 1057 32			116 18	116 18		★ 1
2	MARION L & ETHEL E HOLLAND 321 FOX STREET DENVER 9 COLO 3000562 1058 67			302 00	302 00		★ 2

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— Cameraman

Form 23A
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised March 1942)

Gov. E. C. C

District MONTANA

ASSESSMENT LIST

1040ES INCOME TAX

Page No. FEB-20008

Lis FEB-1947 SUPP LIST

		OLD BALANCE	DATE	DEBIT	CREDIT	NEW BALANCE	REMARKS
0	BELFORD P & ANGELINE TROSPER RT 1 RONAN MONT FEB-200080 0A-1944		FEB 4 '47 INT	49 31 5 42	54 73	00	☆ FILED ORIG # 2019733 0
1	MIKE MAKICH SQUARE BUTTE MONT FEB-200081 0A-1944		INT	166 72 19 05	185 77	00	☆ ORIG # 2020776 1
2	MR & MRS MARION L HOLLAND 715 NORTH 29TH APT 3 BILLINGS MONT FEB-200082 0A-1944		INT	160 74 17 56	178 30	00	☆ ORIG # 2018283 2

(P. 295)

[The first three items of Government's exhibits CC and DD have been designated for inclusion in the printed record. The remaining items of each exhibit apply to taxpayers other than defendants.]

NAME HOLLAND, MARION L.

ADDRESS [illegible] 1766 CLARKSON.

ENDORSER, CO-MAKER OR COLLATERAL		RATE	DATE OF NOTE	DATE DUE	NEW NUMBER	DEBITS
300 SH SO. PAC. CO. COM.		6	JAN-3 42	[illegible]	34	1,200.00
DO	DO	6	[illegible]	[illegible]	1,739	1,200.00
VAR. COLL.-ETHEL E. HOLLAND		6	MAY 27 42	[illegible]	2,704	2,500.00
DO	DO	6	[illegible]	OCT 29 42	3,893	3,500.00
DO	DO	6	NOV-5 [illegible]	FEB-3 [illegible]	5,358	3,350.00
DO	DO	6	FEB-3 [illegible]	MAY-4 [illegible]	6,591	3,350.00
DO	DO	6	MAY-4 [illegible]	[illegible]	7,692	2,500.00
DO		6	[illegible]	[illegible]	8,709	3,032.78
DO	DO	6	[illegible]	OCT 26 [illegible]	8,726	2,213.25
DO	DO	6	[illegible]	JAN 18 [illegible]	9,771	3,200.00
DO	DO	6	DEC 21 [illegible]	MAR 20 [illegible]	10,655	5,544.60
DO	DO	5	[illegible]	MAR 20 [illegible]	11,620	2,168.13
DO		5	MAR-6 [illegible]	JAN-5 [illegible]	11,659	7,000.00
DO		5	JAN-5 [illegible]	SEP-5 [illegible]	12,743	7,000.00
DO		5	[illegible]	DEC-4 [illegible]	13,777	7,000.00
DO		5	NOV-8 [illegible]	FEB-6 [illegible]	14,563	4,722.35
DO		5	DEC-4 [illegible]	MAR-4 [illegible]	14,931	7,000.00
DO		5	[illegible]	MAY-7 [illegible]	15,600	4,722.35
DO		5	[illegible]	[illegible]	[illegible]	[illegible]

D-f C. EXHIBIT 1

MAR 2 53

CASE NO. 13188

6 CLARKSON
XXXXXXXXXXXX.

LINES OF CREDIT

NEW NUMBER	DEBITS	OLD NUMBER	CREDITS	DATE OF ENTRY	BALANCE
34	1,200.00			JAN 3 42	1,200.00 ✱
1,739	1,200.00	34	1,200.00	APR 3 42	1,200.00 ✱
		1,739	1,200.00	APR 14 42	.00 ✱
2,704	2,500.00			MAY 27 42	2,500.00 ✱
3,893	3,500.00	2,704	2,500.00	JUL 31 42	3,500.00 ✱
		3,893	150.00	SEP 17 42	3,350.00 ✱
5,353	3,350.00	3,893	3,350.00	NOV 6 42	3,350.00 ✱
6,591	3,350.00	5,353	3,350.00	FEB 3 43	3,350.00 ✱
7,692	2,500.00	6,591	3,350.00	MAY 3 43	2,500.00 ✱
		7,692	2,321.24	JUL 16 43	178.76 ✱
8,709	3,032.78	8,709	1,032.78		.
		7,692	178.76	JUL 27 43	2,000.00 ✱
8,726	2,213.25			JUL 28 43	4,213.25 ✱
		8,726	1,013.25	OCT 19 43	3,200.00 ✱
		8,709	2,000.00		
9,771	3,200.00	8,726	1,200.00	OCT 20 43	3,200.00 ✱
		9,771	500.00	NOV 1 43	2,700.00 ✱
		9,771	2,700.00	NOV 13 43	.00 ✱
10,655	5,544.60			DEC 21 43	5,544.60 ✱
11,620	2,168.13			MAR 8 44	7,712.73 ✱
11,659	7,000.00	10,655	5,544.60		
		11,620	2,168.13	MAR 10 44	7,000.00 ✱
12,743	7,000.00	11,659	7,000.00	JUN 5 44	7,000.00 ✱
13,777	7,000.00	12,743	7,000.00	SEP 5 44	7,000.00 ✱
14,563	4,722.35			NOV 8 44	11,722.35 ✱
14,931	7,000.00	13,777	7,000.00	DEC 8 44	11,722.35 ✱
15,600	4,722.35	14,563	4,722.35	FEB 8 45	11,722.35 ✱
15,831	7,000.00	14,931	7,000.00	MAR 5 45	11,722.35 ✱

Defendants' Exhibit 2 is a check drawn on the First National Bank of Golden, Colorado, dated October 16, 1946, by the LaRay Hotel by M. L. Holland, payable to the order of Fred A. Landry and Mary H. Landry, in the amount of $2,856.66 and endorsed by the payees.

Defendants' Exhibit 3 is a check drawn on the First National Bank of Golden, Colorado, dated October 4, 1946, payable to the order of Fred A. Landry, in the amount of $1,000.00, signed by the LaRay Hotel and M. L. Holland and endorsed by the payee.

Defendants' Exhibit 5 is an agreement dated December 7, 1946, between Carl B. Larned and M. L. Holland for the purchase by Holland of Lots 13 to 17, Block K, Barber's Second Addition to Golden, for the purchase price of $3,000.00, showing the receipt of $25.00 and the balance of $2,975.00 to be paid September 1, 1947, with interest at the rate of 4%.

Defendants Exhibit 6 is a Warranty Deed from Carl B. Larned to M. L. Holland dated August 23, 1947, conveying the property described in Exhibit 5.

Defendants' Exhibit 7 is a check drawn on the First National Bank of Golden, Colorado, dated January 6, 1947, in the amount of $499.00, signed by M. L. Holland, made payable to Ernest E. Waters and endorsed by the payee.

Defendants' Exhibit 8 is a photostatic copy of the check drawn on the U. S. National Bank dated December 9, 1948, in the amount of $623.45 payable to Duval-Davison and signed by M. L. Holland.

Defendants' Exhibit 9 is a photostatic copy of a check drawn on the U. S. National Bank, dated November 9, 1948, in the amount of $1,118.79, payable to Duval-Davison and signed by M. L. Holland.

Defendants' Exhibit 10.

Testimony of Marion L. Holland taken in Room 1 of The Holland House, Golden, Colorado, at 2:20 p. m. on October 25, 1949, in the matter of his income tax liability to the United States.

Present: Mr. Marion L. Holland, Witness; Mrs. Ethel E. Holland, wife of Witness; Mr. Dwight Dulaigh, Tax Consultant; Mr. George C. Bodley, Special Agent; Mr. Albert R. Garvin, Internal Revenue Agent; Mrs. Geneve J. McNevin, Recorder.

Questions were asked by Special Agent Bodley and answers made by Mr. Holland unless otherwise indicated.

1. Q. Mr. Holland, this interview has been arranged for the purpose of securing your explanation of facts related to your income tax liability to the United States. Are you willing to answer questions on this subject? A. Yes, sir.

2. Q. Are you willing to answer questions on these matters under oath? A. Yes, sir.

3. Q. Will you please stand and raise your right hand? A. Yes, sir.

4. Q. Do you solemnly swear that the answers you will give to the questions here asked will be the truth, the whole truth, and nothing but the truth, so help you God? A. Yes, sir.

5. Q. Thank you. A. That means to the best of my ability. You didn't say that, but that is what it is.

6. Q. That will cover it. It is customary in these formal interviews to advise an individual that he has a right under the Constitution to decline to make any statement or answer any question which might incriminate him under the laws of the United States. Are you acquainted with that right which you have? A. Yes.

7. Q. Do you realize that anything you might say here could possibly be used against you in any action by the United States Government at any future date? A. Yes.

8. Q. Have you come here today of your own free will? A. Yes.

9. Q. Will you please state your name? A. Marion Luther Holland.

10. Q. What is the date of your birth? A. May 25, 1889.

11. Q. From whom did you purchase the La Ray Hotel? A. Leonard DeLue.

12. Q. When? A. April 1, 1946.

13. Q. What was the purchase price? A. $75,000.

14. Q. Did that include the inventory? A. No.

15 Q. Was a physical inventory taken? A. Yes.

16. Q. What was the value of the inventory? A. I have forgotten what it was.

17. Q. Can you give us an approximate figure? Just roughly, three, four, or five thousand? A. I have just completely forgotten.

18. Q. How was payment made to Mr. DeLue? By that I mean how much down? A. $30,000.

19. Q. And did you sign a note for the balance? A. Yes.

20. Q. Was that note discounted? A. It was later discounted $2,000.

21. Q. Whose idea was it that the note should be discounted? A. It was DeLue's.

22. Q. Did he offer you a discount if you could pay in full? A. Yes.

23. Q. Where did you get the $30,000 down payment? A. I don't remember whether I gave him—I must have given him a check.

24. Q. On money you had in the bank account? A. Yes.

25. Q. Where did you get the money to pay off the balance of the loan to Mr. DeLue? A. That was a check, too, on the U. S. bank.

26. Q. Did you refinance the note? A. Yes.

27. Q. With whom? A. With the bank.

28. Q. The United States National Bank? A. Yes.

29. Q. What was your net worth on January 1, 1946, just three months prior to the time you purchased the hotel? A. Well, I can't be too accurate, I think it might be $156,000 or $157,000. I would say $157,000.

30. Q. And what did it consist of? A. Cash.

31. Q. Did you own any stocks? A. I don't remember if I did. I don't think I did. No, I'm quite sure I didn't.

32. Q. I don't want to give you the answer here, but my information is that you sold some stocks at the time you bought the hotel. A. Yes, I did prior to that.

33. Q. So that on January 1, '46, you probably still had those stocks at that time? A. I don't remember when I sold those stocks.

34. Q. In addition to the stocks which you owned what other assets did you have? A. Cash.

35. Q. And what is the approximate amount of the currency? A. In addition to the stocks?

36. Q. In addition to the stocks? A. Well, let's see, it was $104,000 plus $9,000 would be $113,000 approximately.

37. Q. Did you have any other assets other than the stocks and the currency? A. Not that I think of at this time.

38. Q. Were all of your securities sold at the time you purchased the hotel, or prior to the time you purchased the hotel? A. Yes. I'd like to correct that to I don't know. I'm not sure.

39. Q. Do you own any securities at this time? A. No.

40. Q. Have you owned any in the last two or three years? A. No, I haven't fooled with the stock market since I have gone in business here.

41. Q. With reference to the currency in the amount of $113,000—when was it acquired? A. Well, it was acquired through my life-time was the best way I know how to answer that.

42. Q. Can you give us any particular date on which a portion of it was accumulated? A. No, I don't know that I can except that I had around $20,000 when I was drafted into the first World War—something above $20,000—and through the twenties I made what I consider now as a rapid accumulation.

43. Q. How much had you accumulated by 1933? A. I had $104,000 in cash on the 22nd day of December in 1933 when I quit business at 1615 Welton Street.

44. Q. Was the additional $9,000 accumulated since 1933? A. Yes.

45. Q. Did that $104,000 which you had on December 22, 1933, remain intact until after you went into the hotel business here? A. Yes, it did.

46. Q. You never spent or invested any part of it during the intervening years? A. No.

47. Q. Would the additional $9,000 represent the amount of the savings of you and your wife during the period 1933 through 1945? A. Yes.

48. Q. Would you have any more savings than the $9,000 during that period? A. Ask me that again.

49. Q. Would you have saved more than $9,000 during that period in possibly some other form? A. What period was that?

50. Q. 1933 through 1945. A. Why yes, I saved something above $50,000.

51. Q. Is that represented by your investment in securities? A. You will find it, I think, in my tax returns —should be.

52. Q. Would that be represented in your investment in the stock market? A. Yes; that accumulation?

53. Q. Yes. A. Yes, it would.

54. Q. In other words, to summarize this whole thing: you had a net worth of $157,000 at January 1, 1946, which consisted of $104,000 which you had since December 22, 1933, and the balance of $9,000 in currency, and your investment in securities—or the value of your securities. A. Yes.

55. Q. What liabilities did you have on January 1, 1946? A. I don't recall. I had some liabilities though. I had a note to the U. S. bank secured by stock. I don't remember what it was.

56. Q. Did you have any others? A. I don't recall that I did.

57. Q. Did you have any old liabilities dating from the time you had been in business in 1933? A. Oh yes, personal. I will correct that question and say that I had denied them; that I had corporate liabilities but I denied them personally.

58. Q. Can you give us any estimate of the amount of the unpaid liabilities of those former corporations? A. No, I can't at this time.

59. Q. Had any payments been made on those accounts since 1933? A. No.

60. Q. Can you tell us to whom they were owed? A. I can go back and correct that other question as to any payments being made on any of those accounts. In the summer of '46 there was $2500 that went to Windsor Farm Dairy or H. Brown Cannon, whoever it may have been.

61. Q. Is that the only payment? A. Yes.

62. Q. Can you give us the names of some of the

other accounts which were outstanding? A. I don't want to go into all that detail and have you calling on these individuals and having that all—all that embarrassment built up before me again.

63. Q. Did you tell us several days ago when we were here that the total amount of these liabilities would be as much as $35,000? A. I think so, perhaps more if they were all itemized.

64. Q. Had you been sued on them? A. Yes, my corporation had been sued.

65. Q. Were you sued jointly with the corporation? A. I think so. Yes, I think so. That is a mess that I can't remember the detail of.

66. Q. Were any judgments against you secured? A. I think there was just one small judgment, just one actual judgment against me personally, I think.

67. Q. Was that judgment satisfied? A. No.

68. Q. Do you know which creditor that was? A. I don't want to bring that up either.

69. Q. Who was your landlord? A. I don't want to discuss that either.

70. Q. But, although you don't wish to give the names of these creditors, you think the total outstanding obligations for rent and purchases and supplies would be as much as $35,000? A. If the obligations were itemized it would probably be more.

71. Q. And the only payment which has been made to date is the $2500 to the Windsor Dairy, is that correct? A. Yes.

72. Q. Can you give us any estimate of your net worth at the end of December 31, 1948? A. No, I can't. However, that is a matter of book record I think.

73. Q. Where did you have bank accounts at that date? A. Golden.

74. Q. Any other? A. A small balance in the U. S.

75. Q. Are those the only two bank accounts you have? A. Yes.

76. Q. Do you still own the hotel and equipment? A. Oh, yes.

77. Q. You owned the coffee shop next door? A. Yes.

78. Q. With the improvements on those two properties as recorded in your books? A. Yes.

79. Q. And you owned the residence at 815 Thirteenth Street? A. Yes.

80. Q. And the residence at 1500 Ford Street? A. Yes.

81. Q. The skating rink building in Golden? A. Yes.

82. Q. Did you own 160 acres of land which you call "The Horse Pasture"? A. Yes.

83. Q. What was the cost of that, Mr. Holland? A. $4,000. (Should be $6,000.—W. L. H.*)

84. Q. How many horses did you own? A. I have five I think.

85. Q. And what did they cost you? A. I think it's $1,000, isn't it?

86. Q. Did you own a horse barn and the building? A. Yes.

87. Q. And land? A. Yes.

88. Q. What was the cost on that? A. About $6,000.

89. Q. At the end of 1948 what is the approximate amount of cash which you would have had in your registers and safe at the hotel? A. I don't know. I can't tell you close enough to give you a figure that would be what I would say is the value that you want.

90. Q. I believe you told us on a previous interview that it would be approximately $1,000 in the registers and safe under normal operating conditions. A. It might be quite a bit more than that because we carry enough money behind us there to handle checks, and it would depend on the day of the week that the year might have ended, and so forth, and I don't know how much cash we had at that date you are asking.

91. Q. You normally carry how much in each register as a bank? A. We set the registers in the morning with $450 and then we have cash behind us in the safe.

92. Q. Did you have any other currency at that time? A. Yes, I did.

93. Q. Can you tell us how much that would have amounted to? A. Well, I checked that somewhere in that period, I don't recall just when, it might have been a month before the first or month after—somewhere in there—and if I remember accurately it was around $30,000.

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*Handwritten correction on original.

94. Q. From what source had you accumulated that $30,000 in currency? A. That $30,000 was just a part of my accumulation behind me.

95. Q. A part of the $113,000 which we discussed previously? A. Yes, it was.

96. Q. It was not an accumulation during the years '46, '7, and '8? A. That was an accumulation that had not been put in circulation.

97. Q. What liabilities did you have on December 31, 1948? A. Who knows now? $25,000 to Hitchings. (Also mortgage 1500 Ford St. W. L. H.*)

98. Q. Were any of the current bills applying to the hotel business past due? A. Not past due, no.

99. Q. Do you or your wife own real estate or property outside of Jefferson County? A. No.

100. Q. Do you or your wife have any bank accounts other than the United States National at Denver and the First National at Golden? A. No, we don't.

101. Q. Do you or your wife have any postal savings accounts? A. No.

102. Q. Corporation stocks? A. No.

103. Q. War bonds? A. No.

104. Q. Any other securities? A. No.

105. Q. What life insurance policies do each of you have? A. I have $25,000 and she has $12,000. (Should be $35,000 and $25,000. W. L. H.*)

106. Q. With what company? A. New York Life and —it is 810 Fourteenth Street—Security Life and Accident.

107. Q. How long have you had these policies? A. New York Life—I think it was '35 or '36 that would be; and the other policy a year.

108. Q. Have you and your wife lived at the hotel continuously since you bought it? A. Yes.

109. Q. Do you eat all of your meals in the restaurant? A. Yes.

110. Q. How many rooms do you occupy? A. Two.

111. Q. I hand you herewith income tax return for the year 1946, Collector's No. 9080875, filed for Marion L. Holland. Is that your return? A. That is my signature, yes.

112. Q. Who prepared that return for you? A. Dwight Dulaigh.

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*Handwritten correction on original.

113. Q. From what information was it prepared? A. Information such as he had from the books.

114. Q. Did you give Mr. Dulaigh any instructions about that return? A. No, he gave me instructions.

115. Q. What was the nature of the information about it which he gave you? A. I don't recall—professional.

116. Q. Did you discuss with him the amount of net income shown by this return? A. No, except that he gives me the report from month to month.

117. Q. What is the amount of net income shown by that return? A. $15,836.93.

118. Q. Were you satisfied with the preparation of this return at the time you signed it? A. Yes.

119. Q. Did you believe that it was correct? A. Yes.

120. Q. I hand you herewith income tax return filed for the year 1947 for Marion L. Holland, Collector's No. 9001208. Is that your signature on that return? A Yes.

121. Q. Did Mr. Dulaigh prepare this return also? A. Yes.

122. From your books and records? A. Yes.

123. Q. Did he discuss it with you A. Yes.

124. Q. Did he point out to you that this return showed adjusted gross income of $6,216.77? A. Yes.

125. Q. Were you satisfied with the preparation of this return? A. Yes.

126. Q. At the time you signed it did you believe that it reflected your true and correct income for the year 1947? A. Yes.

127. Q. This return shows a net income—or rather a net profit from the hotel and bar and restaurant business for the year of $5,407.86. Does that sound correct to you? A. It must have been—that is the books of record, after depreciation, is it not, and so forth?

128. Q. Do you know whether or not that is correct? A. I don't see how it could be otherwise.

129. Q. I hand you herewith federal income tax return filed for the year 1948 for Marion L. and Ethel Holland, Collector's No. 3009488. Is that your signature on that return? A. Yes.

130. Q. Did Mr. Dulaigh prepare it for you? A. Yes.

131. Q. From the same books and records? A. Yes.

132. Q. Did he discuss it with you? A. Yes, as usual.

133. Q. Did he point out to you at that time that the adjusted gross income shown by this return was $11,211.42? A. Yes.

134. Q. Did you believe that this return was correct when you signed it? A. Yes.

135. Q. Do you know whether or not that return is correct? A. It must be.

136. Q. Did you have any income during the years '46, '47, or '48 which is not disclosed on those returns? A. No.

137. Q. With reference to the currency in the amount of $104,000 which you had on hand December 22, 1933, during what period had it been accumulated? A. That was during the period of all my life, most of it through the twenties.

138. Q. Where was this currency kept in 1933? A. Those are questions that have been asked me before, Mr. Bodley, I should have neve. told you anything about that.

139. Q. We are attempting— A. Because the tax was paid on that and that was my savings. That was a question that I should have had a better understanding of it from my attorney, which unfortunately I didn't have. I have already given you that information.

140. Q. Well, we asked you quite a number of questions about it on our previous visit. A. Yes.

141. Q. And you did give us a great deal of information in response to those questions. A. I did, Mr. Bodley. I talked to you more than was necessary. Now, however, I guess it doesn't make any difference.

142. Q. Were your statements to us on those occasions true? A. Yes, as best I could remember.

143. Q. But you didn't make any attempt on that occasion to deceive us in any manner? A. No, I didn't.

144. Q. To the best of your knowledge and belief all those statements were true? A. Yes.

145. Q. Can you tell us what denomination the currency was in? A. Most of it was in hundred dollar bills.

146. Q. When did you convert it to hundred dollar bills? A. From time to time.

147. Q. As it was accumulated? A. No. If I had a hundred dollar bill I seldom ever deposited it if it was taken in in the operation of my business. If I could afford

to take it out I took it out. Some of it was in smaller denominations. Through the twenties I accumulated some big currency which I changed to up-to-date currency from time to time. I had some gold in the twenties that I exchanged into currency when the gold was called in. I never deposited a gold dollar in my life. Any gold that ever came into my business was "pretty money." and I just put it away. There was a time in the twenties when I used to get quite a bit of it.

148. Q. Did I understand you to say that by December 22, 1933, it had all been converted to one hundred dollar bills? A. I don't think it had all been converted. The big money had all been converted but I think that there was others that was partially—what I mean to say is that it was my policy to wrap a whole thousand dollar pack and all of that money was not hundred dollar bills; there was some as low as twenties in it—not very much however.

149. Q. The major portion was in one hundred dollar bills? A. Yes, it was.

150. Q. Where did you keep the money after you quit the restaurant business? A. I kept it at home. Those are questions that have been previously asked and answered too, and it is unnecessary to repeat them.

151. Q. Did you take it to Seattle with you? A. No, I didn't.

152. Q. Where was it while you were in Seattle? A. It was home.

153. Q. Where was it kept while you were in Casper, Wyoming? A. Various places.

154. Q. Was it ever— A. I believe we discussed that too. I don't want to discuss that further.

155. Q. I'd like to ask you at this time if it is your wish that Mr. Dulaigh remain here with us. A. It is all right.

156. Q. Well, I want to be sure that is your desire. A. Yes.

157. Q. Because he was present for the interview with your wife at her request, not at ours; and is it your request that he remain here during this interview? A. Yes.

158. Q. Did you take the currency to Billings, Montana, with you? A. Yes.

159. Q. Where did you keep it in Billings? A. That

DO	DO	6	DEC 21 [illegible]	MAR 20 [illegible]	10,655		5,544.60
DO	DO	5	MAR -6 [illegible]	MAR 20 [illegible]	11,620		2,168.13
DO		5	MAR -6 [illegible]	JUN -5 [illegible]	11,659		7,000.00
DO		5	JUN -5 [illegible]	SEP -5 [illegible]	12,743		7,000.00
DO		5	SEP -5 [illegible]	DEC -4 [illegible]	13,777		7,000.00
DO		5	NOV -8 [illegible]	FEB -6 [illegible]	14,563		4,722.35
DO		5	DEC -4 [illegible]	MAR -4 [illegible]	14,931		7,000.00
DO		5	FEB -6 [illegible]	MAY -7 [illegible]	15,600		4,722.35
DO		5	MAR -4 [illegible]	JUN -2 [illegible]	15,831		7,000.00
DO		5	MAY -1 [illegible]	JUL 30 [illegible]	16,530	—	11,703.84
DO		5	JUL 30 [illegible]	OCT 29 [illegible]	17,622		11,703.84
DO		5	[illegible]	JAN 28 [illegible]	18,868		11,703.84
DO		5	JAN 29 [illegible]	APR 29 [illegible]	20,243		11,703.84
SEC BY T/O	ASSIGT. INS	4 1/2	APR 29 [illegible]	JUL -249	21,886		35,000.00

D. f. C. EXHIBIT 1

MAR 2 59

CASE NO. 13186

				3,771	2,700.00	NOV	12	43	.00 M
44	10,655	5,544.60				DEC	27	43	5,544 60 M
44	11,620	2,168.13				MAR	4	44	7,712.73 M
44	11,659	7,000.00	10,655	5,544.60					
			11,620	2,168.13	MAR	10	44	7,000.00 M
44	12,743	7,000.00	11,659	7,000.00	JUN	5	44	7,000.00 M
44	13,777	7,000.00	12,743	7,000.00	SEP	5	44	7,000.00 M
45	14,563	4,722.35			NOV	8	44	11,722.35 M
45	14,931	7,000.00	13,777	7,000.00	DEC	8	44	11,722.35 M
45	15,600	4,722.35	14,563	4,722.35	FEB	8	45	11,722.35 M
45	15,881	7,000.00	14,931	7,000.00	MAR	5	45	11,722.35 M
45	16,530	11,703.84	15,600	4,722.35				
			15,881	7,000.00	MAY	7	45	11,703.84 M
45	17,622	11,703.84	16,530	11,703.84	JUN	20	45	11,703.84 M
			17,622	11,703.84	NOV	1	45	
46	18,868	11,703.84			NOV	1	45	11,703.84 M
46	20,246	11,703.84	18,868	11,703.84	JAN	22	46	11,703.84 M
			20,246	11,203.84	FEB	5	46	500.00 M
			20,246	500.00	FEB	22	46	.00 M
9	21,886	35,000.00			APR	29	46	35,000.00 M
			21,886	2,500.00	JUL	26	46	32,500.00 M
			21,886	7,500.00	AUG	16	46	25,000.00 M
			21,886	2,500.00	FEB	1	47	22,500.00 M
			21,886	2,500.00	JUN	14	47	20,000.00 M
			21,886	2,500.00	SEP	14	47	17,500.00 M
			21,886	2,500.00	DEC	14	47	15,000.00 M
			21,886	15,000.00	FEB	14	48	.00 M

question has been asked before too, and I don't want to go into any further detail on that.

160. Q. Did your wife know about the currency? A. Oh yes.

161. Q. Did anyone else know about it? A. No.

162. Q. When did you start using the currency? A. Sometime after I decided that I would settle permanently in Golden at some date after I bought the hotel. I don't remember the exact date.

163. Q. What did you use it for? A. For the purchase of property that was essential to the operation of my business.

164. Q. Are those various properties we have previously mentioned here this afternoon? A. Yes.

165. Q. Did you deposit the currency in a bank? A. What currency?

166. Q. This $104,000 that we have been discussing. A. Some of it as I needed it to write checks for various purposes.

167. Q. In which of the banks was that that it was deposited? A. There might have been a few occasions that I had to make deposits in the bank at Golden to clear my checks. I don't recall if there was. It seems to me that on one occasion, for some reason or other, I had to go and get some money in the U. S. bank just as I needed to clear a check. I put a sufficient amount in to clear the check and leave a balance in order not to close the account.

168. Q. Is my understanding correct that the major portion was deposited in the United States National Bank of Denver? A. I don't think it would have been the major portion. I don't recall.

169. Q. Let me put the question this way: do I understand correctly that only a small amount, if any of it, went in the Golden bank? A. Yes.

170. Q. Did your wife ever deposit any of that currency? A. When those deposits were made they were made with some regular deposits. I don't recall ever having gone down and made a direct deposit of what I call necessary cash to clear checks with, but I would add to that, as an illustration, $1,000 to the regular account.

171. Q. Did you use any of it for payment direct on properties? A. Yes, I did.

172. Q. Without running it through your bank account? A. Oh yes, I did.

173. Q. Do you remember what some of those occasions were in connection with which properties? A. It was on occasion with all of them I think.

174. Q. Did you ever keep any record of the withdrawals of this currency as you took it out of your— A. No.

175. Q. What method did you have of keeping track of what you had left? A. Just in my head. It was round figures and easy to keep account of. As far as that is concerned I have always been very conscious of that of course.

176. Q. Why didn't you use the money to pay off your loan on the hotel? A. Well, simply because that I had told Mr. DeLue that I didn't have the money and I didn't want to pay it off till the first of the year.

177. Q. Why did you not pay for your other properties in full at the time of purchase? A. Just don't like the idea of putting money out; it wasn't necessary. Wanted to keep it as long as I can.

178. Q. Did you recently make a payment to the Windsor Dairy on an old bill owing since 1933? A. That was in the summer of '46.

179. Q. What was amount of that payment? A. $2500 if I remember correctly. I may be mistaken as to that. That is a matter of book record.

180. Q. Did you write a check for it? A. I don't know.

181. Q. Did that pay the account in full? A. Yes.

182. Q. Was the actual payment in full or an agreed settlement? A. It was an agreed settlement.

183. Q. Why had that not been paid previously? A. I don't want to answer that.

184. Q. Are there any suits pending against you now? A. No.

185. Q. Do you have a good credit rating now? A. I have credit, I don't know whether it is considered good or not.

186. Q. Have you ever furnished financial statements to anyone? A. Not that I know of.

187. Q. What records do you maintain relative to the

business which you operate? A. It is all a matter of record in the books.

188. Q. Who keeps those books? A. Dwight Dulaigh.

189. Q. And where does he keep them? A. In his office.

190. Q. And what information do you furnish him for keeping books? A. All of it.

191. Q. Do you give him your canceled checks? A. No, we give him the check stubs.

192. Q. Does he have information relative to your personal bank account? A. No.

193. Q. What information do you give him concerning the receipts of your business? A. Accurate.

194. Q. Accurate in what form? A. Detailed daily cash report.

195. Q. Does that daily cash report show the sales? A. It shows the receipts and it shows the cash paid out.

196. Q. Who prepares that information for him—the daily cash report? A. Well, Mrs. Holland does it most the time.

197. Q. Do you ever do it? A. I don't think I do.

198. Q. Does your accountant have information concerning your investment in real estate? A. I think so.

199. Q. Does he have information concerning your payments on notes? A. No.

200. Q. Do you give him information concerning the costs of your addition to your hotel or the additional equipment you buy? A. Yes.

201. Q. Have you in the past given him any information concerning the amount of currency that you had on hand? A. No.

202. Q. Are all the receipts from your businesses deposited in your bank accounts? A. No.

203. Q. What are the exceptions? A. Cash paid out items.

204. Q. Are there any other cash paid out for current bills? A. Other than receipts?

205. Q. Yes, other than supplies for the hotel. A. I didn't understand it.

206. Q. Are there any amounts of cash paid out for items other than merchandise and bills for the hotel and restaurant business? A. No.

207. Q. What about cash withdrawn for personal expenses? A. I keep no record of that. If I want five or ten dollars I just pick it up and put it in my pocket. I spend very little money. I don't need to spend but very little money.

208. Q. What would you estimate the living cost of you and Mrs. Holland to be for the year? A. I just wouldn't want to estimate because I didn't think they were concerned with what it cost to live myself, and if I live as cheaply as I can I have no reason to spend my money. I have my food here, I have my living quarters here, and there is no reason for it to cost me very much. I have no reason to draw very much cash out of my business.

209. Q. Did you ever draw cash out of the business to purchase real estate? A. No, I didn't.

210. Q. What is the source of the money deposited in your personal bank account in Denver at the United States National? A. It is not receipts from the hotel—savings.

211. Q. Have you personally made the deposits in the United States National Bank in Denver? A. Yes.

212. Q. Who checks the cash registers? A. Mrs. Holland.

213. Q. Are the cash register tapes now available? A. No.

214. Q. What happened to them? A. What happened to what?

215. Q. Those cash register tapes. A. I have no further use for them.

216. Q. Were they thrown away daily? A. They are thrown out in the waste basket, as they are just now.

217. Q. Does your wife devote all her time to the business here? A. Yes.

218. And do you? A. Yes.

219. Q. How long have you been filing federal income tax returns? A. Since 1921.

220. Q. Where have they been filed? A. Denver, Casper, Billings, Golden—well, that is Denver.

221. Q. Yes. They would all have been filed in Colorado, Wyoming, or Montana, is that correct? A. Yes.

222. Q. Have you filed joint returns with your wife or separate returns? A. When it is to our advantage to file

joint returns it's been joint returns, and when there is no benefit we don't bother with her signing it.

223. Q. Can you tell us how much money you have made on Curtis Publishing Company stock? A. No, I can't.

224. Q. Have you made some money with that stock? A. I think I have.

225. Q. Any large amount? A. No, I don't think it was any large amount. I believe you will find that in the Montana returns.

226. Q. How long have you been investing in the stock market? A. Since I can remember.

227. Q. Have you made much money in the stock market? A. Yes, I have made money in it.

228. Q. Have all your stock market profits been reported in your federal income tax returns? A. Insofar as I know.

229. Q. When did you start in the restaurant business? A. In 1921.

230. Q. Where was that? A. 1444 Champa Street.

231. Q. Did you purchase the restaurant there? A. Yes.

232. Q. How much did it cost? A. I don't remember.

233. Q. How long were you at that location? A. I think I operated it myself. I don't know if it was two or three years, and then I sold it and resold it three or four times before I finally got it sold on payment of half down. I sold it for—I want to go and make a statement to the best of my recollection I paid $5,500 for that place. It seems to me that is the figure and I resold it for $10,000 about four times I think, and I got half cash and had to take it back.

234. Q. When did you move to 1732 Welton? A. '23.

235. Q. How long were you at that location? A. Ten years.

236. Q. And where did you move from there? A. 1615 Welton.

237. Q. How long were you at 1615 Welton? A. Four or five months.

238. Q. When was your restaurant business incorporated? A. I can't be too accurate; I think the first was '26.

239. Q. Was that the Holland Cafe Company? A. I think so.

240. Q. Did you form a new corporation called the Pine Grove Cafe Company? A. Yes, I think I did.

241. Q. Do you remember what year that was?A. No, I don't.

242. Q. Did you later form another corporation known as Rocky Mountain Restaurant Company? A. Was that it or was it Holland Investment Company? There was a Holland Investment Company in there somewhere. I think it was the Rocky Mountain Restaurant.

243. Q. I think that there was a Rocky Mountain Restaurant Company. A. I think there was. I think that must have been the last one. I didn't work with it long enough to remember the name.

244. Q. How much of the stock did you own in each of the corporations? A. I guess all except qualifying stocks for directors.

245. Q. Did you control the corporations as completely as you had your individual business before it was incorporated? A. Yes.

246. Q. When did you discontinue the restaurant business? A. December 22, 1933.

247. Q. Why did you go out of business? A. Simply because of the times and other situations where that, in my language, the cards were definitely stacked against me for successful operation.

248. Q. Was the business bad at that time? A. Yes.

249. Q. Was it profitable? A. No.

250. Q. Had you been losing money? A. I hadn't been losing money because I hadn't been putting it in to lose.

251. Q. Had you been going behind on your accounts? A. Yes.

252. Q. Did you have tough competition? A. Yes.

253. Who? McVittie? A. Yes.

254. Q. What was he doing? A. Think I have already told you but I will review that in a few words. We had a legal problem and in order to secure a Blue Eagle to put in your window the regulations of the Federal Government required that we pay a wage equal to what we were paying in '29 to our employees. That wage was $6 a day to cooks and $3 a day to waitresses on an eight-hour basis; and as

my business would go down and I would lay employees off, McVittie would hire the same employee—cooks at $2 a day and work them ten, twelve, and fourteen hours a day, and he'd hire my girls for $1 a day. I couldn't get those concessions or any concessions whatsoever out of my union employees was the reason for the first re-organization, which I think might have been about '32, and there was a public resentment against me for not cooperating with the recovery, or so-called recovery program of displaying the Blue Eagle in my window and the outlook was of such nature that it just wasn't wise for me to try to continue to do business at that time.

255. Q. Did the businesses owe any money at that time? A. Yes.

256. Q. About how much? A. I don't remember.

257. Q. Were you sued by any of your creditors? A. Not at that time.

258. Q. Had you been prior to that? A. Yes, that had come about on a previous re-organization.

259. Q. Do I understand that when the obligations got too great or the suits too many that you formed a new corporation to get a fresh start? A. Yes.

260. Q. Were there any judgments secured against you? A. I have answered that in this questionnaire here now that there was.

261. Q. Did you take bankruptcy? A. No sir.

262. Q. Were you ever declared bankrupt as a result of the court suits? A. No sir.

236. Q. When you quit the business in 1933—In December 1933—did you sell out to someone? A. No, I just picked up my money—what I could—and walked out and called H. Brown Cannon, the man whom I paid this settlement with on the note in the summer of '46 because he was the only one at that time who had mortgages recorded against the fixtures of my business, and I called him and told him that I was giving him the setup for what I owed him.

264. Q. Did he take over the restaurant with its fixtures and equipment? A. I don't know what he did.

265. Q. As far as you were concerned you left it for him. A. Yes.

266. Q. What happened to the inventory? A. It was all there.

267. Q. Did he get that too as far as you know? A. I don't know what the deal was in there. I simply just took off in disgust. I just felt that the world had been unfair to me and I wanted to get away from something—I didn't know just what it was—and I just took off, and I had a long ride from Denver to Seattle, down to San Francisco, back to Salt Lake, and home, trying to get my equilibrium back to where I could think straight.

268. Q. Did you relaize anything from the restaurant when you abandoned it and left it in December 1933? A. I had picked up $4,000 in the four or five months. No, I hadn't either. I had some of that—most of that in reserve on the capital that I had set aside to make that move.

269. Q. But you didn't sell out to anyone? A. No.

270. Q. After that, what did you do? A. Well, I think I sold Hoover vacuum cleaners.

271. Q. For about how long? A. Probably six months.

272. Q. When did you go to Casper? A. December '34.

273. Q. And where did you live there? A. Townsend Hotel.

274. Q. How long did you work at the Townsend Hotel? A. Seven years.

275. Q. What was the approximate amount of your salary there? A. About $200; it was $175.

276. Q. Did that include your meals? A. Yes.

277. Q. Living quarters? A. Living quarters, laundry. My expenses there were a little tobacco and a new pipe occasionally.

278. Q. Did your wife and son remain in Denver during those years? A. Yes, I kept thinking that I would return in possibly six months all the time I was there, and it was to our economical advantage to remain under those conditions. We never, of course, expected that this would be seven years when I took off; in fact, I had planned it would be about sixty days, how I happened to stay that long I don't know. As time went on I looked forward to election hoping for the defeat of the New Deal that I couldn't understand how I could work with.

279. Q. When did you return to Denver? A. Just before Christmas in '41.

280. Q. What did you do for the next year? A. I

worked at the Golden Lantern restaurant for a period there. I don't know how long, five or six months I guess.

281. Q. In what capacity? A. Chef.

282. Q. Did you go to Texas? A. Yes. Then I went to Orange, Texas, for the Anderson Subsistence Company. He was the man who had the contract in the shipyards at Orange, Texas.

283. Q. What kind of work were you to do there? A. Chef, steward.

284. Q. How long did you stay? A. I didn't stay there but a short time. I couldn't sleep with the mosquitos and the sanitary conditions had my goat.

285. Q. After you returned from Texas what did you do? A. I went to Billings.

286. Q. What date was that? Approximate date? Would that have been in the fall of '42? A. I think so. I think it would have been. I think it must have been around the latter part of August or first of September.

287. Q. For whom did you work there? A. Q. Edwards.

288. Q. What was his business? A. Restaurant.

289. Q. And what was your position? A. Manager, chef, steward—manager.

290. Q. How did you happen to go to work for Mr. Edwards? A. He had been after me for three or four years.

291. Q. He contacted you on this particular occasion or did you contact him? A. I don't recall that, but he had been after me constantly for a period of time and—oh yes, I called him up.

292. Q. About the job? A. Yes. I talked it over with him and went up to see him.

293. Q. And you did go to work for him and you worked until when? A. First of April, '45.

294. Q. Why did you quit? A. Sold out.

295. Q. Mr. Edwards sold out? A. Yes, he sold out.

296. Q. Did Mrs. Holland live in Billings with you? A. After Bill, my son, was drafted into the army she came to Billings.

297. Q. After the restaurant was sold in 1945 what did you do? A. I returned to Denver with the intention of

retiring for the duration of the war, couldn't find a place to live and had to come out here to find shelter.

298. Q. Did you live several different places in Denver? A. Yes, we lived all around.

299. Q. How did you happen to go to work for Mr. DeLue? A. Just for that reason—to have a place to, well, to stop the expense of living—depreciation of my savings—and I decided I was too young to retire and had to have a place to live and eat and to keep going, and I considered it was worth while at the time.

300. Q. How did you contact Mr. DeLue? A. I believe that the first contact with him—oh, I believe Jim Daugherty told me to see him.

301. Q. Who was Jim Daugherty? A. Jim? The Acme Employment office.

302. Q. Were you registered there in connection with work? A. No.

303. Q. When did you go to work at the LaRay Hotel? A. I don't remember the date. It must have been about the first of May.

304. Q. 1945? A. Yes.

305. Q. And how long did you work? A. Until the 15th of November that year.

306. Q. What did you do then? A. I went down to see my boy at Fort Reno in the army and went to see my parents in Arkansas—have a vacation for four months.

307. Q. When did you return to the LaRay Hotel? A. I don't remember the exact date.

308. Q. Was it early in '46? A. Yes.

309. Q. And did you work here at the LaRay Hotel until you purchased it April 1, 1946? A. Yes.

310. Q. What was your salary during that period? A. You know I don't remember that except I had a working arrangement with him on the previous period. I had a working arrangement with him for 25 per cent of the net operating result before any charges of any kind.

311. Q. During the first three months of 1946 was any portion of that salary applied against the payment for the hotel? A. I don't remember that.

312. Q. Were you actually paid your salary during that time? A. And I have discussed that. I have thought of

that before. I don't remember how that happened. I believe, though, that it must have been adjusted.

313. Q. As part of the settlement? A. I think it must have been. I'm not sure about that.

314. Q. After you bought the LaRay Hotel did the business continue about the same. A. I don't think it did for a while. I think it went down for a while because of the fact that I am a different type of operator than DeLue. I don't operate with drunkenness and rowdyism, and I think it went down until I re-established it with my own following.

315. Q. And then did it pick up? A. Not in '46, no.

316. Q. In '47? A. In '47 I think it did, didn't it? I don't know.

317. Q. Were you able to effect any economies after you obtained ownership? A. I don't know how to answer that question because of the fact that I was the manager of the hotel for DeLue as far as the operation was concerned, so I would say that my answer would be no. Probably was a little more. I put on a little more help and gave a little better service. I served a little more and a little better food; and such things are necessary to establish a business on a personal basis.

Mr. Bodley: Mr. Garvin, do you have any questions?

Questions by Mr. Garvin.

318. Q. I believe that you made the remark that the State of Colorado made adjustment for your personal living expenses here in the hotel. Now is that in connection with the sales tax or income tax? A. Employment security.

319. Q. Did you borrow from any banks between 1933 and 1945? A. 1933 and 1945?

320. Q. Yes. A. Yes, I did.

321. Q. From which banks? A. I used my wage and savings earnings through the period in stock market transactions and sometimes borrowed from the banks.

322. Q. You borrowed to pay for the stocks? A. Sometimes a small amount, yes.

323. Q. Which banks would those have been? A. That is the banks carried the stock, you know, the banks that I did business with. It would have been United States National and Wyoming National of Casper, and I think that is

all. I may have borrowed something at some time from the Casper National but I doubt it; but I think it was in the Wyoming National altogether in Casper, and that was in comparatively small amounts.

324. Q. Did you, at the time you were in the restaurant business in Denver, avail yourself of the services of any public accountant like Mr. Dulaigh? A. No.

325. Q. You prepared your own returns? A. Yes. Through the twenties it wasn't necessary. The accounting was very simple, it wasn't complicated, I could see my way through.

Mr. Garvin: No further questions.

Questions by Mr. Bodley.

326. Q. Did you do business with any of the banks in Billings? Did you have an account at any of the banks in Billings? A. Small accounts.

327. Q. Checking account? A. Yes.

328. Q. Did you borrow from any of the banks in Billings? A. No.

329. Q. Did you have a checking account at Casper? A. No.

330. Q. Did you have a safety deposit box in Billings? A. That isn't necessary.

331. Q. I believe you testified here earlier that you had about $104,000 in c rrency in 1933 and that you had about $35,000 in outstanding obligations. Can you give us the reason why you didn't pay off all those creditors at that time? A. I have stated that before, Mr. Bodley, and I don't care to restate that. That is an embarrassing question which I don't believe has any bearing on this.

332. Q. Do you mean that you gave us that information in a previous interview? A. I think I did.

333. Q. Is there anything further you wish to add at this time? A. I don't know what it would be.

334. Q. Have all of your statements here been made freely and voluntarily without any threat or reward or promise of reward having been offered you in return for them? A. Yes.

335. Q. Have all of your statements been made under oath to tell the truth? A. Yes.

336. Q. When a typewritten transcript of this statement

is prepared will you be willing to read it and sign it as your true statement made under oath? A. To the best of my recollection.

Concluded at 4:10 p.m.

[Each page of the original statement bears the initials "M.L.H."]

United States of America, District of Colorado, ss.

I have carefully read the foregoing statement, consisting of 29 pages, which is a transcript of questions which were propounded to me and my answers to such questions on October 25, 1949, at Golden, Colorado, relative to my income tax liability to the United States. I hereby certify that the foregoing answers are true and correct, and that I have made the corrections shown and have placed my initials opposite each correction, and that I have initialed each page of the statement.

M. L. HOLLAND.

Subscribed and sworn to before me this 2nd day of November, 1949, at Golden, Colorado. George C. Bodley, Special Agent, Intelligence Unit Bureau of Internal Revenue.

Defendants' Exhibit 11.

Testimony of Mrs. Ethel E. Holland taken in Room 1 of The Holland House, Golden, Colorado, at 1:20 p.m. on October 25, 1949, in the matter of her income tax liability to the United States and that of her husband, Marion L. Holland.

Present: Mrs. Ethel E. Holland, Witness; Mr. Marion L. Holland, Husband of Witness; Mr. Dwight Dulaigh, Tax Consultant; Mr. George C. Bodley, Special Agent; Mr. Albert R. Garvin, Internal Revenue Agent; Mrs. Geneve J. McNevin, Recorder.

Questions were asked by Special Agent Bodley and answers made by Mrs. Holland unless otherwise indicated.

1. Q. Mrs. Holland, this interview has been arranged

for the purpose of securing your explanation of facts related to the income tax liability of you and your husband to the United States. Are you willing to answer questions on this subject? A. Yes sir.

2. Q. Are you willing to answer these questions under oath to tell the truth? A. Sure.

3. Q. Will you please stand and raise your right hand? Do you solemnly swear that the answers you will give to the questions here asked will be the truth, the whole truth, and nothing but the truth, so help you God? A. Yes sir.

4. Q. Thank you. Please state your name. A. Ethel E. Holland.

5. Q. Where were you born? A. Denver.

6. Q. Do you mind telling us when? A. December 11, 1899.

7. Q. When were you and Mr. Holland married? A. 1918, May 26.

8. Q. How many children do you have? A. We have just one living. We lost two.

9. Q. I see. Is that a son? A. Yes.

10. Q. How old is he? A. Twenty-five.

11. Q. Have you been living with Mr. Holland at all times since you were married? A. Thirty-one years.

12. Q. It is customary in these formal interviews to advise an individual that they have a right under the Constitution to decline to answer any question or to make any statement which might incriminate you under the laws of the United States. Do you understand that right? A. Yes sir.

13. Q. And do you realize that anything you might say here could possibly be used against you in any action by the United States at any future time? A. Yes.

14. Q. Have you come here today of your own free will? A. Yes sir.

15. Q. I might say in explanation of this right not to incriminate yourself, it doesn't mean that you have a right to give us wrong answers. A. No, no.

16. Q. It merely states you may decline to answer a question which you felt you should do. A. Yes.

17. Q. Is your accountant present? A. Yes.

18. Q. And what is his name? A. Dulaigh. Dwight Dulaigh.

19. Q. Is it your wish that he remain here during this interview? A. Yes.

20. Q. Have you assisted your husband in the management of the hotel since you and your husband purchased it? A. Yes, sir.

21. Q. What has been the nature of your services? A. Well, I don't know. I guess I have done a little bit of everything—desk work, dining-room work, everything but the kitchen.

22. Q. Do you keep any of the books or records? A. No, just make a daily record for the bookkeeper.

23. Q. What information do you furnish Mr. Dulaigh? A. All receipts, all of the cash paid out; and then, of course, I turn the check book over to him on those paid by check.

24. Q. Who pays the bills that are paid by cash? A. I do or the cashier that is on the desk at the time.

25. Q. Who writes the checks? A. I write them.

26. Q. Do you sign them also? A. No, Mr. Holland signs the checks.

27. Q. Are you authorized to sign the checks? A. No.

28. Q. Is the payroll paid by check? A. Yes sir.

29. Q. Do you write those? A. Yes sir.

30. Q. What is the nature of the bills paid by cash? A. Anything that is delivered here. Well now, all small items and everything that I can pay by cash is paid by cash when it is delivered.

31. Q. Do you make any large payments by cash? A. Oh, I don't know. If it's something delivered I would.

32. Q. But it would be merchandise in connection with the restaurant? A. Yes.

33. Q. Who checks the cash registers? A. I do.

34. Q. Are they balanced every day? A. Yes sir, I balance them each morning.

35. Q. Who prepares the envelope showing the daily sales and the paid-outs? A. I do.

36. Q. What is done with the cash register tapes? A. After I have prepared my report for Mr. Dulaigh I throw them away. I balance each register separately and then I combine them.

37. Q. Are the receipts deposited daily? A. No. In the summer time I deposit every day; this time of year I deposit about three times a week.

38. Q. Are the receipts deposited in full? A. No, I just leave a certain amount in my cash box and deposit everything else. I leave a certain amount of change here and deposit the balance.

39. Q. In which bank are the receipts deposited? A. First National Bank of Golden.

40. Q. Do they all go there? A. Yes.

41. Q. What record is made of currency withdrawn by you or Mr. Holland for personal purposes? A. No record.

42. Q. In other words if you need some money you just take it out of the cash? A. Just use it.

43. Q. Do you have any idea how much of that there might be in a year? A. I haven't the least idea. It is very little, just whatever we need from time to time.

44. Q. Does it consist of just money required for personal living? A. Yes, that is all we'd take.

45. Q. And are the remaining receipts after the paid-outs and what you have taken for living expenses eventually deposited in the bank? A. I just maintain a balance in the safe and deposit the rest.

46. Q. Have you withdrawn currency to pay for improvements or additions to the hotel? A. If I have it's been on the daily cash report.

47. Q. What bank accounts do you and your husband have? A. First National is the only active one. He carries a small balance in the United States National Bank just to keep that account alive.

48. Q. Who makes deposits in each bank? Do you make deposits? A. I just make the deposits down here is all I ever make.

49. Q. Does anyone else make any deposits here? A. Oh, once in a while an old man who comes in here, and I give him cigarettes to go get my change for me.

50. Q. And does he sometimes make deposits? A. Yes.

51. Q. And does he sometimes make a deposit for you? A. Yes, a justice of the peace.

52. Q. Do you make a practice of cashing checks? A. Yes.

53. Q. Are the current receipts sufficient to cover your check cashing? A. I carry enough to cash what we have

to. If I haven't the cash I tell them to come back later and I will take care of it.

54. Q. I was wondering if it was necessary to go to the bank and draw money out. A. I don't cash checks to that extent. It is simply an accommodation, and if I have it I do it.

55. Q. What is the source of money deposited in the United States National Bank, Denver? A. Well, Mr. Holland occasionally puts money in there if he needs it to pay some bill or something.

56. Q. What sources of income have you and your husband had during the years '46, '7, and '48? A. The last three years? Hotel, I guess that is it. I don't know, I imagine that covers it. This is where we put all our time.

57. Q. During what years have you personally filed federal income tax returns? A. I haven't the least idea. I think our account has always been joint until maybe this last year. I think maybe it was separate then. I think we always file a joint account.

58. Q. At any time since you were married have you had income of your own? A. Oh yes, I was a stenographer. I did temporary work for a long time and I worked while Mr. Holland was away.

59. Q. When did you start working? A. When I was about seventeen, right out of high school.

60. Q. For whom did you work while Mr. Holland was away? A. I worked all the time during the first World War. I don't even remember where. I think most of that was temporary work. And I have always worked with Mr. Holland when he has been in business, and while he was in Casper I worked for Fox Theaters.

61. Q. When did you start working for the Fox Theaters? A. Permanent? Steady, you mean?

62. Q. Yes. A. I did temporary work occasionally for them back in '29 and when Mr. Holland went away I worked steady.

63. Q. Was that in 1933? A. Yes.

64. Q. How long after 1933 did you work for them? A. I maintained our home until our son had to go to the army. When Bill went to the army I moved to Billings with Mr. Holland and then we came back here together—'42 I guess. I don't remember. I don't know whether it was '42 or '43.

65. Q. That is close enough if that is the time your son went to the army. A. I can look up on his discharge and find out when.

66. Q. That is accurate enough for this purpose. Can you give us the approximate amount of your salary during that period? A. I made a couple of thousand a year I guess.

67. Q. During the years 1933 to 1941 or '42 were you living with your husband? A. Well, Mr. Holland was away but we were maintaining our home in Denver. It was simply a temporary arrangement. We felt he was away from home—we weren't.

68. Q. Was your son living with you at the time? A. Yes.

69. Q. Who took care of him while you worked? A. Well, he was big enough he didn't need care. I was with him every morning and every evening.

70. Q. Was that in '33 and '34? A. Yes, Bill went to school. We had Bill taken care of if I wasn't home with him. I'd make arrangements for his lunch and I was there for breakfast and dinner; but when he was in high school he had his lunch at school.

71. Q. At what address did you live during those years? A. I lived at the Broadmoor Apartments on South Broadway, and I lived at 415 East Bayaud.

72. Q. Why did you continue working in Denver instead of joining your husband in Casper? A. Because my boy was in school.

73. Q. How much of your earnings were you able to save during the period that you worked? A. I saved all I could. We just simply paid our living expenses and I had a niece who lived with me that carried half the expense of the house, and I saved every cent I could.

74. Q. Would you be able to give us any kind of an estimate as to how much that might have been? A. No, I don't know because I never have spent any more than I have to, and save all the rest always.

75. Q. Were your savings invested? A. Mr. Holland always takes care of our savings.

76. Q. You turned it over to him? A. Yes.

77. Q. Did you assist your husband in his restaurant business prior to 1933? A. Yes, always.

78. Q. Why did your husband go out of the business in 1933? A. We just didn't like things. We decided we were going to get out.

79. Q. Was the business sold to someone? A. No, we just closed out. The business reached a point where it wouldn't carry itself.

80. Q. Were there any unpaid bills outstanding? A. I don't know as there were. I don't remember.

81. Q. You don't know whether or not you were able to pay all the creditors when you closed? A. I don't know anything about how he closed it out. When it wasn't able to carry itself he quit.

82. Q. Had the earnings of the restaurant been good prior to 1933? A. Yes sir, very good. We had the largest place in Denver for years.

83. Q. Well, I believe that you have indicated it wasn't very good when you quit? A. It reached a point to where it wouldn't carry itself. It wasn't good then. That was about the time of the bank moratorium; that is when everything stood still.

84. Q. Yes, I remember those myself. A. There was no sense in putting good money after bad.

85. Q. How had it been in 1932—the prior year? A. Everything was hectic at that time. That is the time of the moratorium, isn't it? '32?

86. Q. Yes. A. Everybody was upset. I don't think there was anyone in business or anything that wasn't upset. I don't remember how business itself was. I can't put it point to point but I know in '33 it wasn't worth carrying on.

87. Q. How much money had you and your husband accumulated or saved at that time? A. At what time?

88. Q. 1933, when you closed the restaurant business. A. Mr. Holland had $104,000 when he closed. We had $100,000 during the bank moratorium, we kept the $4,000 after that.

89. Q. Was that money invested at that time? A. No, it was our savings.

90. Q. In what form was it? A. Currency.

91. Q. How had the money been accumulated? A. Mr. Holland had saved it out of his business. He had saved it all his life. He had money when we were married and made money always.

92. Q. Where was the money kept? A. Well, we took care of it. We have never talked of this. I don't like talking about it now.

93. Q. I am sure you don't, and I wouldn't ask the questions if I didn't feel that it did have a bearing on the matter we are investigating. A. I just don't like things like that. Things like that lead to trouble.

94. Q. Did you have access to the money? A. Sure.

95. Q. Did you ever count it? A. No.

96. Q. What happened to the money? A. What happened to it?

97. Q. Yes. A. I don't know what you mean.

98. Q. Do you still have it? A. We have invested some in here.

99. Q. Do you mean in the hotel? A. Mr. Holland used it in his business when he decided to settle down. We saved that money for the purpose of establishing us when he felt the time was right. We never felt the time was right before is why we never touched that money.

100. Q. What has the money been used for? Can you give us some of the items? A. No, I can't.

101. Q. Has it been deposited in the bank? A. Oh, he may have deposited part of it at times when he was writing a check on it.

102. Q. Has it been used to make direct payments for the purpose of property to your knowledge? A. I don't know what was used. It wasn't separated in any way to tell what it was used for.

103. Q. If I understand you correctly, you have had this money since 1933? A. What money?

104. Q. The currency. A. Well, we had it a long time before that. You don't mean that we just got it in '33?

105. Q. You had accumulated it up until 1933? A. Yes.

106. Q. Did you make any additional accumulation to it after '33? A. Sure. We saved all the time until we went in business.

107. Q. Do I understand you to indicate that you hadn't spent any of it prior to 1946—spent or invested it? A. The $100,000?

108. Q. Yes. A. No, we didn't touch that.

109. Q. Can you give us an estimate of how much it had increased by 1946? A. I don't know exactly. You mean when we went in business?

110. Q. Yes, when you started spending it the first time. A. I just don't know. I don't know exactly.

111. Q. How do you know there was $100,000? A. We put that away with the idea of never touching it until we were ready to use it. That was our goal.

112. Q. Were any suits filed against you in 1932 or 1933? A. I don't know. He had something about the car, I don't know what it was. I didn't pay any attention. I don't know what it was. He would have to give you that information.

113. Q. Did you recently pay the Windsor Dairy some money on an old bill? A. I think so.

114. Q. Do you know how much that was? A. No, I don't remember.

115. Q. Was it paid by check? A. I don't know. I don't even remember whether it was with cash, check, or bank draft—I haven't the least idea.

116. Q. You didn't handle that payment? A. No, I didn't handle that.

117. Q. Was that bill dating from the time you had been in the restaurant business prior to 1933? A. Evidently it was a merchandise bill.

118. Q. Do you know why it hadn't been paid before? A. I don't know why it wasn't. It was something that was between Mr. Holland and Mr. Cannon and I don't remember what the details were.

119. Q. Do you remember any other suits back in those days? A. No sir, I don't.

120. Q. Do you remember a suit by the American Medical & Dental Association in 1931? A. Yes. I didn't pay that because I was mad. I wouldn't have paid it yet if I could have gotten out of it. We nearly lost our boy through the care that doctor gave him—$45, wasn't it? They added double to it. That was after Mr. Holland left. They came down to Fox and garnisheed my wages.

121. Q. Were you dissatisfied with the service you had received? A. From the doctor?

122. Q. Yes. A. Yes, indeed. That is why I didn't pay the bill, but they made me and added double to it.

123. Q. You have no knowledge of other suits which might have been filed at that time? A. No, I don't recall any. I had forgotten that one—that medical association, but I remember I was very mad at the time.

124. Q. Did they get a judgment against you? A. No, I paid it.

125. Q. You paid it? A. Yes, I paid it. I didn't want to have trouble over it. They had some Jew lawyer call me.

126. Q. When you paid this medical bill, which you say you think was $45— A. I think it was about $45. I think originally it had been about $20 and I think when they added all their charges to it—

127. Q. Did you pay that all at one time? A. No, I think I made them wait. I think I paid just a little at a time because I was mad at them.

128. Q. Has Mr. Dulaigh ever told you that you should save your cash register tapes? A. What in the world would I do with them?

129. Q. The question was whether or not he had told you you should save them. A. I don't know. I don't think so. I don't know. Anyway I don't have room for them.

130. Q. My question was whether or not he had ever said you should. A. I don't think so. If he did I don't even remember it.

131. Q. What is the source of the money which was deposited in the so-called personal account at the United States National Bank in Denver? A. That is from our savings.

132. Q. Would that be the currency you have been talking about? A. Well yes, it might be. That would be, you mean, when we went into business here?

133. Q. Well you have had an account at the United States National Bank in Denver which I understand is not your regular business account but a personal account. A. Yes.

134. Q. During the past three years while you have been in business there have been considerable deposits made in the bank and I was wondering where that money came from. A. That is from the savings.

135. Q. Do you know whether or not any of the savings went into the Golden bank? A. May have occasionally when it was necessary to cover checks.

136. Q. You think most of it went to the United States National in the acquisition of property? A. I don't know just where it went but all we did is just keep enough money down here to operate on. When it's necessary we add to it.

137. Q. I hand you herewith federal income tax return for the year 1948 for Marion L. and Ethel Holland, Collector's No. 3000948. Is that your income tax return? A. Yes, that looks like my signature.

138. Q. By whom was the return prepared? A. Dwight Dulaigh.

139. Q. Did you give Mr. Dulaigh any instructions about the preparation of the return? A. No, I think he made it right from his books.

140. Q. Is that return correct to the best of your knowledge and belief? A. Best of my knowledge. I wouldn't have put my name on it if I hadn't thought so.

141. Q. You don't know of anything at this time which would not be right? A. I am sure that included it all.

Mr. Bodley: Mr. Garvin, would you like to ask some questions?

Mr. Garvin: Yes, sir.

Questions by Mr. Garvin.

142. Q. Mrs. Holland, did you back in 1946 have a personal account at the First National Bank at Golden in addition to the business account? A. No, I'll tell you what we had—a LaRay Hotel account and then we changed it to Holland House. No personal account.

143. Q. With regard to sales: exactly on what figures did you base your daily receipts as you put it to Mr. Dulaigh? A. I don't know what you mean "on what base".

144. Q. Well, in other words, you would have so much in sales for the day—the hotel, the bar. A. I itemized them.

145. Q. And those figures were taken from where? A. I balance each register each morning and then I combine them and make report to Mr. Dulaigh.

Mr. Garvin: No further questions.

Questions by Mr. Bodley.

146. Q. Is there anything further you wish to say at this time, Mrs. Holland? A. Not that I know except I don't see why all this fuss.

147. Q. Have all your statements here been made freely and voluntarily? A. I think so. I don't know.

148. Q. Without any threat or reward or promise of reward having been offered you in return for them? A. No.

149. Q. Have all your statements here been made under oath to tell the truth? A. Yes, sir.

150. Q. When a typewritten transcript of this statement is prepared will you be willing to read and sign it as your true statement made under oath? A. I don't know how to answer that. I guess so, I don't know why I shouldn't. I don't think you have asked me anything I would mind signing my name to.

Concluded at 2:15 p. m.

United States of America, District of Colorado. ss.

I have carefully read the foregoing statement, consisting of 14 pages, which is a transcript of questions which were propounded to me and my answers to such questions on October 25, 1949, at Golden, Colorado relative to the income tax liability to the United States of myself and my husband, Marion L. Holland. I hereby certify that the foregoing answers are true and correct, and that I have made the corrections shown and have placed my initials opposite each correction, and that I have initialed each page of the statement.

ETHEL E. HOLLAND,

Subscribed and sworn to before me this 2nd day of November, 1949 at Golden, Colorado. George C. Bodley, Special Agent, Intelligence Unit, Bureau of Internal Revenue.

[Each page of the original statement bears the initials "E. H."]

Defendants' Exhibit 12.

Daily Cash Report.

Date Feb. 23, 1953.

Cash Receipts.

Hotel	$ 50.50
Cafe	337.75
Tax	6.75
Bar	25.70
Cigarettes	10.60
T. & T.	.90
Newspapers	1.25

Cash Disbursements.

Hotel.

Laundry	$ 6.30

Cafe.

Laundry	4.53

Bar.

Cigar	7.60

[The exhibit also contains supporting data such as receipts, tickets, adding machine tape and computations.]

Defendants' Exhibit 13.

Copy.

Memorandum of Interview with Marion L. Holland, 2:40 p. m., Sept. 14, 1949 at Holland Hotel, Golden, Colorado.

Present: Marion L. Holland, taxpayer; A. R. Garvin, rev. agent; R. L. Balingall, spec. agt.; G. C. Bodley, spec. agt.

Mr. Balingall introduced agents Garvin and Bodley to Mr. Holland and explained that they would be working on the examination of his income tax returns. Mr. Holland stated that he had talked to his attorney, Mr. Appel, and that the attorney told him to tell the examining officers about his cash on hand. He said that he had currency of approximately $30,000 on hand at December 31, 1948 and that he had about $150,000 in April 1946 when he purchased the

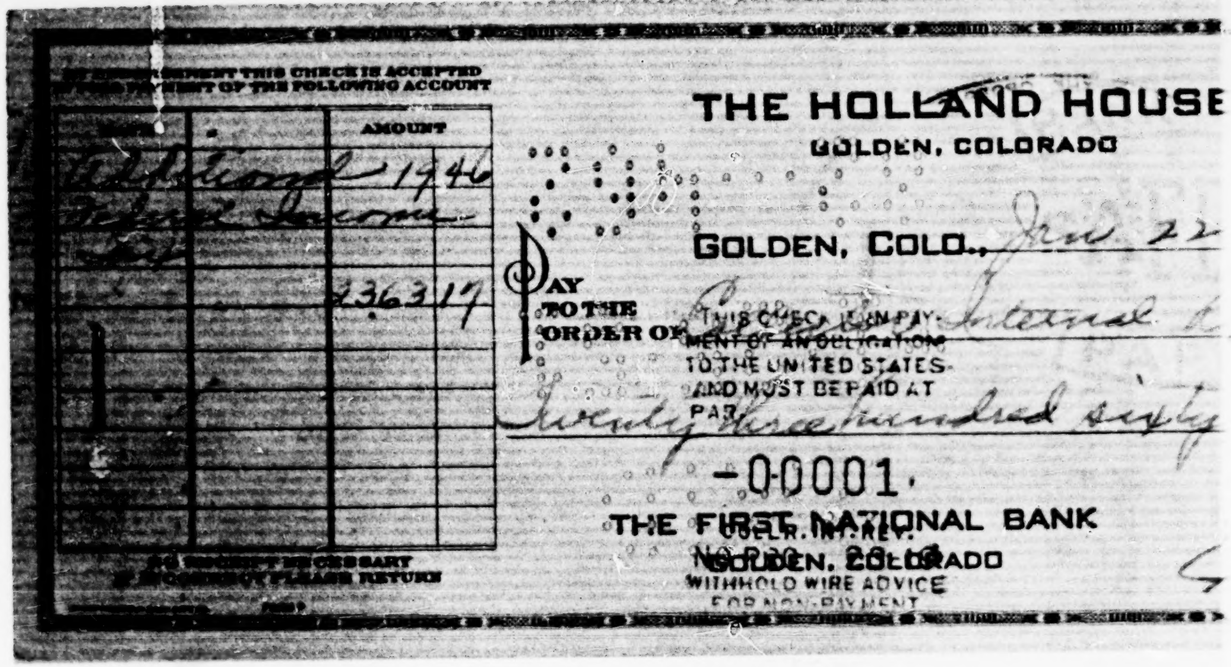
hotel, $40,000 of which was in his bank account and $110,000 of which was in currency in a black canvas bag. He said he had been in the restaurant business for many years in Denver, Colorado and that the $150,000 represented his life savings. He further stated that he had made considerable money in the stock market during the 20's. He said that his tax consultant (Mr. Dulaigh) did not know anything about his affairs except what the books showed and asked that we discussed things not on the books with him (Mr. Holland) personally.

Mr. Holland stated that he kept about $800 in the cash register at the hotel plus some small change to "back them up" but he kept more in the safe for cashing checks; that he carried $5,000 insurance on the money and that occasionally over a weekend, the receipts would make the total over $5,000.

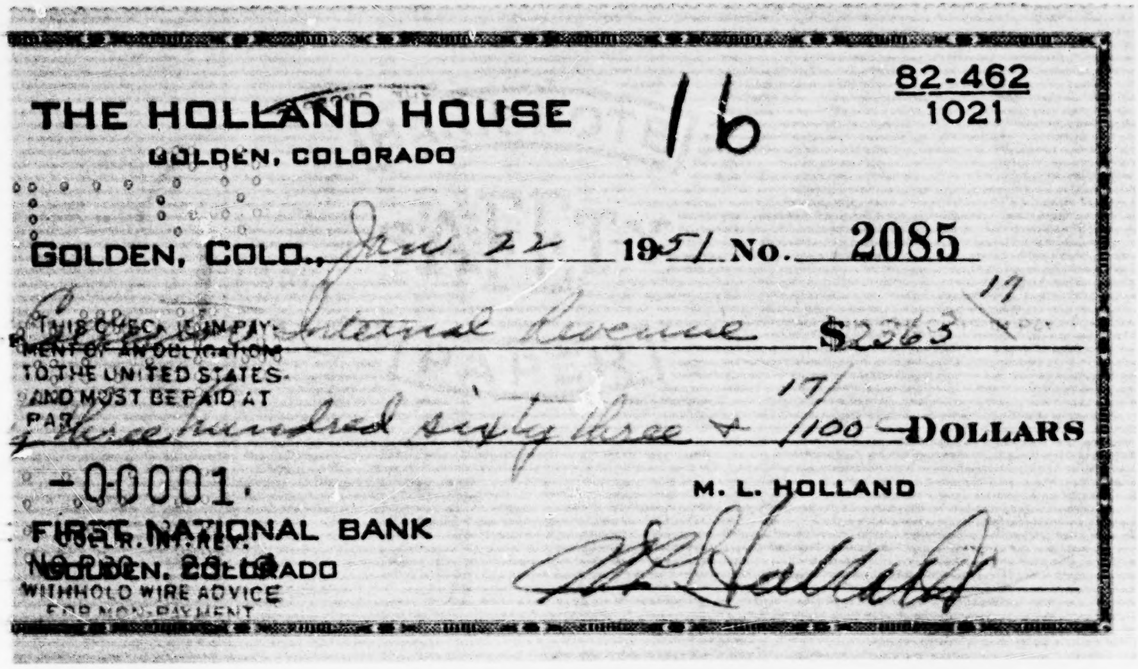
GEORGE C. BODLEY.

9-14-49.

Defendants' Exhibit 14



Defendants' Exhibit 14



Clerk's Certificate.

I, G. WALTER BOWMAN, Clerk of the United States District Court for the District of Colorado, do hereby certify the foregoing pages, numbered one (1) to four hundred twenty-four (424), both inclusive, are the originals, except pages 4, 6, 7, 10, 21, 22, 23, 24, 25, 413, 414, 415 and 416, which are Clerk's Notes and copies of the record and proceedings as designated by counsel and as required under paragraph G of Rule 75 of the Rules of Civil Procedure, and as required under Rule 39 (B) (1) of the Rules of Criminal Procedure, in a case lately pending in this court, wherein The United States of America was plaintiff, and Marion L. Holland and Ethel E. Holland were defend-
425 ants, Criminal Case No. 13188.

In testimony to the above, I do hereunto sign my name and affix the seal of said Court at the City and County of Denver in said District, this 29th day of May, A. D. 1953.

G. W. BOWMAN,
Clerk.

(Seal)

Filed United States Court of Appeals Tenth Circuit, June 3, 1953, Robert B. Cartwright, Clerk.

[fol. 341] In The United States Court of Appeals for the Tenth Circuit

Argument and Submission—November 12, 1953

(Omitted in printing)

In The United States Court of Appeals for the Tenth Circuit

Frank A. Bruno (H. D. Reed and Anthony F. Zarlengo were with him on the brief) for Appellants.

Clifford C. Chittim (Charles S. Vigil was with him on the brief) for Appellee.

Opinion—January 21, 1954

Before Bratton, Huxman and Murrah, Circuit Judges

Murrah, *Circuit Judge.*

Marion Holland and Ethel Holland, husband and wife, separately appeal from a judment and sentence on jury convictions for willfully attempting to defeat and evade their income tax liability for the calendar year 1948, in violation of Section 145(b) 26 U.S.C.A.

The first count in the indictment charged the husband with violations of 145(b) for the calendar year 1946, by filing or causing to be filed in the District of Colorado, a false and fraudulent return, wherein he stated that his net income for the said calendar year was $15,336.93 and that the amount of the tax due and owing thereon was $3,980.39, when, as he well knew, his net income for the said year was $38,471.03, upon which net income he owed a tax of $15,688.75.

The second count charged the husband with violations of Section 145(b) for the calendar year 1947, for filing or caus-
[fol. 342] ing to be filed in the District of Colorado a false and fraudulent return, wherein he stated that his net income for the said year was $5,717.57 and that the amount of tax due and owing thereon was $851.74, when, as he well knew, his net income for the said year was $34,631.97, upon which net income he owed a tax of $13,846.99.

The third count of the indictment, upon which both the appellants were convicted, charged them with violations of

Section 145(b) by filing or causing to be filed in the District of Colorado a false and fraudulent return for the calendar year 1948, showing income of $11,211.42 with a tax of $1,532.52, when, as they well knew, their true net income for such year was $29,948.16, upon which they owed a tax of $7,518.88.

The husband was acquitted on the first two counts of the indictment, and the evidence relating to those two counts is relevant only insofar as it bears upon the charge in the third count, upon which the appellants were convicted and sentenced.

The returns for each of the prosecution years were prepared by a tax accountant from books and records kept by him from information furnished by appellants. There is no contention that the returns do not accurately reflect all of the income shown on the books and records maintained by the taxpayers in the course of their business as owners of a hotel and restaurant in Golden, Colorado. There is no direct proof of any specific unreported item of income or undisclosed sources of income, or that any items of expense claimed as deductions were not legitimate and allowable. The government's case rests solely on the circumstances of increased net worth established by record purchases and expenditures during the prosecution period to prove a substantial understatement of taxable income for those years. And, the first contention of the appellants is that the government failed to prove with sufficient accuracy the net worth of appellants at the beginning of the prosecution period.

Relying primarily upon Bryan v. United States, 175 F. 2d 323; and United States v. Fenwick 177 F. 2d 488 appellants [fol. 343] take the position that to prove a prima facie case based on increased net worth and expenditures, the government must produce evidence which excludes or tends to exclude all other available sources from which the increased net worth and expenditures could have been derived. It is of course incumbent upon the government to prove to a reasonable degree of accuracy the net worth of the taxpayer at the beginning of the prosecution period, otherwise there could be no foundation for the hypothesis that the established increased net worth represented unreported current income. But, the "government is not required to prove

a negative or to refute all possible speculation" as to the source of increased net worth. Gariepy v. United States, 189 F. 2d 459, 463; see also Schuermann v. United States, 174 F. 2d 397; Leeby v. United States, 192 F. 2d 331. One bent on income tax evasion cannot be expected to make a record of his unreported income, indeed, the disposition is toward concealment. The government is not required to go beyond records reasonably available in order to foreclose any permissible inference that the unexplained excess expenditures in any taxable year were derived from sources other than current income. United States v. Johnson, 319 U. S. 505.

From records and information available to it, the government fixed a net worth for the appellants as of January 1, 1946 in the sum of $19,152.59, consisting primarily of a checking account and common corporate stocks. From record purchases and expenditures in the year 1946, the government showed an increased net worth for that year in the sum of $57,410.94, and by the same method determined an increased net worth of $33,796.25 for the calendar year 1947 and $33,011.72 for 1948. These net worth increases established a taxable income substantially in excess of the reported income for the respective years on which a substantial additional tax would be due and payable.

As a part of its proof of opening and increased net worth of the taxpayers, the government investigator testified from sworn statements of the appellants made in connection with [fol. 344] the investigation, and introduced in evidence by the appellants. In those statements, the husband stated that the excess expenditures for the years in question represented their lifetime savings, accumulated prior to 1946; that on January 1, 1946, he had a net worth of $156,000.00 or $157,000.00, consisting of $104,000.00 in currency, mostly one-hundred-dollar bills, all of which he earned and accumulated prior to December 22, 1933; $9,000.00 earned between 1933 and 1946, $4,000.00 by himself and $5,000.00 by him and his wife. The remainder of the accumulated funds was in corporate stocks. With respect to the $104,000.00 in currency, he stated that he had $20,000.00 when he was drafted into the army for the First World War, and that after discharge and in the Twenties, he speculated on the stock market and in real estate; and operated, bought and sold restaurants, one

of which he sold three different times at a profit of $15,000.00; that when, in 1933, the restaurant business became unprofitable and he was unable to pay his debts, he just closed up and told the mortgagee to take over—"I just gave him the setup for what I owed him"; and that at that time he or his wholly owned corporations owed approximately $35,000.00 in unpaid bills. He further stated that immediately after closing his restaurant business, he sold vacuum cleaners for about six months, and then went to Casper, Wyoming, where he worked as a chef in a hotel for seven years for $175.00 a month and living quarters. During all of this time his wife and son remained in Denver for economic reasons, and his wife worked as a secretary. Upon returning to Denver in 1941, he worked as a chef in a restaurant there, later went to Orange, Texas where he also worked as a chef, thence to Billings, Montana, and back to Colorado where he was employed as a chef in the hotel which he purchased in the Spring of 1946. During all of this time, he stated that he kept the $104,000.00 in currency in a sack or metal box in his room or wherever he happened to be living; that only his wife knew of the funds; that he never invested or deposited the money any place at any time until he decided to purchase the hotel in Golden, Colorado in 1946, whereupon from time to time he deposited funds in the bank sufficient to cover the [fol. 345] checks he wrote for the expenditures which the government contends represented current income.

In addition to the sworn statement of appellant, the government introduced evidence tending to show that in 1933, when he went out of business, he was unable to pay his rent; that his creditors were threatening to sue him for his unpaid bills, and at least one judgment was rendered against him and his corporation. A dairy bill incurred prior to cessation of business in 1933 was compromised in 1936 for $2,500.00. He defaulted on $10.00 per month installment payments for furniture purchased in 1933. Correspondence introduced in the record showed that in 1928 and 1929, he was pleading with his creditors not to bring suit or to insist upon payment in order to avoid bankruptcy. The appellants objected to the introduction of this correspondence and contend on appeal that it is too remote and was written in behalf of a separate corporate entity. But, we think it had an admissible bearing on the question of his opening net

worth, especially in view of his asserted affluence at that time.

The government introduced the appellant's income tax record in Colorado from 1913 to 1933 to show that he reported no taxable income during the time he claimed to have been accumulating his currency assets. The government also introduced, over the objection of appellants, copies of certificates of assessment and payment of income taxes for the years 1933 to 1941, to show that during the husband's residence in Wyoming, he paid only nominal income taxes. The certificates were on a prescribed form of the Treasury Department and directed to the Intelligence Unit of the Internal Revenue Service at Denver, Colorado. They were signed by the Director for the State of Wyoming, who, as legal custodian of the official records of the United States Bureau of Internal Revenue for the State of Wyoming, certified that the transcript of the accounts of the taxpayer was true and complete for the period stated; that all assessments of tax, penalty and interest were shown therein; and that after diligent search, no record or entry appeared on his rec- [fol. 346] ords except as therein indicated. The exhibits were produced in court by a witness who did not make them and had no personal knowledge of their contents. The appellants claim reversible error for the admission of these exhibits on the grounds that they were admittedly false and incorrect upon their face and not properly authenticated.

The government also introduced in evidence the appellant's income tax return for the year 1944 filed in Montana and his income tax return for the year 1945 filed in Colorado, apparently to show reported income for those years. The tax assessment list in the State of Montana for the years 1946 and 1947 were also admitted in evidence for the same purpose. The appellants complain of the admission of the income tax returns and of testimony by a special agent of the Bureau who referred to them, on the grounds that the documents were not properly authenticated, and not having custody or personal knowledge of the contents of the records, his testimony based thereon was hearsay. Objection was made to the admission of the assessment lists from the State of Montana because not properly certified. The special agent who produced them did not prepare them or have offi-

cial custody of them, nor did he have personal knowledge of their content. But, he did testify that the proffered exhibits were of the official records of the Bureau of Internal Revenue for the State of Montana, certified by the Director, and by him directed to produce the same in court.

Each and all of these exhibits are official records of a department of the United States, and they are admissible under Section 1733, 28 U. S. C. A. "to prove the act, transaction or occurrence as a memorandum of which the same were made or kept." And, they were also admissible to show the absence of any record or entry of a relevant act, transaction or occurrence. See Rule 44(a)(b) Federal Rules of Civil Procedure, made applicable by Rule 27 of the Federal Rules of Criminal Procedure. See also Wong Wing Foo v. McGrath, 196 F. 2d 120; Clinton Co. v. Commissioner of Internal Revenue, 159 F. 2d 102; Moore's Federal Practice, 2d Ed., Vol. 5, Sec. 44.02; Wigmore on Evidence, 3d Ed., Vol. V, Sec. 1638, 1638a and 1639.

[fol. 347] Appellants call attention to the husband's statement to the investigator to the effect that their greater purchases of corporate stock "were still on hand in 1946"; and assert that in determining their net worth as of January 1, 1946, the government failed to give them credit for the value of corporate stocks held at that time. In reconstructing the gross income for the year in question, and for that purpose determining net worth on January 1, 1946, the government credited appellants with the ownership of corporate stocks with a value of $29,650.00. In his 1946 return, appellant's capital gain schedule reflected the sale in February 1946 of stocks acquired in 1943 and 1945 at a cost of $29,650.00 for $52,142.78, or a net capital gain of $10,968.44. The representative of the bank where the stocks were pledged for loans testified that all the stock pledged for collateral was liquidated or withdrawn early in 1946, and thereafter all other loans were secured by deeds of trust. Subsequent returns for the period in question did not reflect the sale of any stock. If, therefore, any stocks remained unsold in 1946, they must be assumed to have remained in his custody and could therefore have no bearing on his net worth as established by purchases and expenditures.

Appellants also complain of the government's computation of net worth on the basis of the cost of the stock owned by

appellant on January 1, 1946 in the sum of $29,650.80 instead of its market value or sale price of $52,142.80. In reconstructing appellant's income tax liability for 1946, the government listed the stock at cost, and when, in 1946, it was liquidated, it ceased to be an item of net worth. The nontaxable capital gain in the sum of $10,968.44 was subtracted from the total funds expended in arriving at the adjusted gross income; and the taxable one-half of the capital gain was deducted from gross income to arrive at net income tax liability. By this method, we think the taxpayers were given full credit for the value of their stock at the beginning of the prosecution period.

The point is also made that the government has failed to establish the opening net worth of the wife, but the evidence [fol. 348] shows that if she did in fact have earnings, they were included in the hoard of currency the husband claimed to have had in his possession on January 1, 1946.

The appellants earnestly contend that the government has failed to establish any tax liability for the year 1948 over and above the amount paid. For the calendar year 1948, appellants reported a taxable income of $11,211.42 on which they paid a tax of $1,532.52. On the basis of the government's established net worth as of January 1, 1946, as projected through 1948, the appellants realized an increased net worth of $33,011.72, or unreported income of $20,885.74. Taking the government's net worth computations on their face, it becomes plain that the appellants showed a substantial additional income tax liability for the taxable year 1948, even after credit for unclaimed depreciation and capital expenditures during that year. It is not incumbent upon the government to prove the exact amounts of the unreported income, it is sufficient to show that it was substantial and willful. United States v. Johnson, 319 U. S. 505; United States v. Rosenblum, 176 F. 2d 321, 330; Graves v. United States, 191 F. 2d 579; Jelaza v. United States, 179 F. 2d 202. If the appellants did not have the $104,000.00 in currency on January 1, 1946, which they claim represented the excessive expenditures during the prosecution period, the evidence is entirely sufficient to show a substantial understatement of income for the calendar year 1948. If, however, the expenditures were derived from cash on hand January 1, 1946, it is entirely sufficient to absorb and explain the exces-

sive expenditures. We think the evidence presented an issuable fact for the jury.

Turning to the instructions, appellants claim that the court failed to instruct the jury upon the section of the Act which forms the basis for the indictment or upon the essential element of the crime charged; that it erred in its instructions to the jury on the law of reasonable doubt and circumstantial evidence; and that it committed reversible error in defining the issues for the jury, as well as requisite proof to establish tax evasion by the net worth expenditure method.

[fol. 349] The substance of each count in the indictment was recited to the jury and it was informed that by appellants' pleas of not guilty, every essential element of the crimes charged in the indictment was placed in issue and the burden was upon the government to produce evidence to satisfy the minds of the jury beyond a reasonable doubt of the existence of every one of those material and essential elements of the crime charged by the grand jury; and that if the government failed, it was the duty of the jury to acquit the appellants. Alternatively, the jury was told that if the government produced evidence which satisfied their minds beyond a reasonable doubt of the existence of the elements of the offense, it would be their duty to return a verdict of guilty against the defendants. True, the court did not recite the statute or make reference to it in his instructions, but the offense charged is embodied in the indictment and a recitation of the statute involved is not a necessary part of the offense charged. Kahle v. United States, 204 F. 2d 864. Each count in the indictment, and especially the third, charged an offense to evade and defeat income tax liability in violation of federal law. The substance of the indictment was given to the jury in language too clear for doubt.

The jury was told that "beyond a reasonable doubt" did not mean beyond every doubt or leaving no doubt at all, but a doubt based upon reason and common sense in the exercise of the jury's intelligence, that it meant a "substantial doubt, not a trivial doubt; a significant doubt, not a flimsy one; a real doubt and not an imaginary one." Appellants specifically object to that part of the court's instructions which went on to tell the jury that reasonable doubt meant

that kind of a doubt which "you folks in the more serious and important affairs of your own lives might be willing to act upon" and that if they felt "such a doubt" about the government's case, they should acquit the defendants. This latter part of the instructions is said to improperly define a doubt upon which the jurors would act "rather than to pause and hesitate before acting."

There are many definitions of "reasonable doubt". Some [fol. 350] courts assert that the words themselves carry their own best definition and that any attempts at clarification or definition tend only to confuse an otherwise simple phrase. See 20 Am. Jur. Evidence, Sec. 1257; 53 Am. Jur. Trial, Sec. 751; Words & Phrases, Perm. Ed., p. 297, 319; Wigmore on Evidence, 3rd Ed., Vol. IX, Sec. 2497. Under the federal rule, however, the accused is entitled to a definition of the term "reasonable doubt", and failure to instruct upon request has been held to constitute error. Nanfito v. United States, 20 F. 2d 376; Blatt v. United States, 60 F. 2d 481; Eagan v. United States, 287 Fed. 958; Mundy v. United States, 176 F. 2d 32; Schencks v. United States, 2 F. 2d 185. But, a proper definition of the term does not depend upon the observance of a ritual or the use of precise words found in some accepted definition. United States v. Schireson, 116 F. 2d 881; United States v. Stoehr, 100 F. Supp. 143, affmd. 196 F. 2d 276. It is sufficient if the jury is given to understand that reasonable doubt as applied to the measure of its persuasion means a real or substantial doubt generated by the evidence or lack of it; and that beyond a reasonable doubt means to a reasonable or moral certainty. Wigmore, supra, Sec. 2497.

While the court's definition of "reasonable doubt" may not be a model of clarity and conciseness, we think it does suffice to convey the legally acceptable meaning of the term.

The jury was repeatedly admonished that the government's case was based upon circumstantial evidence and that before they could convict the appellants, they must believe that evidence beyond a reasonable doubt. In that connection, they were told to use their common sense in determining what inferences might reasonably be drawn from the circumstances which they thought were established by the proof. While circumstantial evidence was not defined in time-honored terms that it must be consistent with

guilt and inconsistent with any other hypothesis, we do not think the court left any doubt in the minds of the jury of the nature of the proof or how it should act upon it. Again, [fol. 351] there are no "inexorable formulas on the subject; it is enough that the judge shall in substance tell the jury that they must be satisfied beyond any reasonable chance of mistake." United States v. Austin-Bagley Corp., 31 F. 2d 229, 234. This, we think, the court did in satisfactory, if not ritualistic terms.

The court was at pains to define the issues for the jury. With commendable clarity, the court gave the jury the theory of the government and generally referred to the circumstantial evidence of the government in support of that proof, at the same time cautioning the jury that it was the judge of the evidence, as well as the weight and credibility of the witnesses. After relating the appellant's theory of defense, the jury was told in substance that they should determine whether or not the defendants knowingly and willfully failed to include gross receipts from their business which the government claimed they earned and did not report for the taxable years in question. It was instructed that the government's case was based upon the theory that the defendants did not have $104,000.00 on January 1, 1946, and that the increases in their net worth for the years in question were the result of purchases from earnings in the taxable years in question from their business.

We agree with the trial court that the ultimate and precise issue in the case was whether they believed beyond a reasonable doubt from the established circumstances that there was no such fund in existence on January 1, 1946. If they didn't believe the appellants' explanations, they were justified in concluding beyond a reasonable doubt that the excessive expenditures were derived from current earnings. These instructions framed the triable issues in the case. Guilt or innocence turned on a resolution of those issues and they were properly presented to the jury.

Finally, appellants complain of the government's use of certain charts in the closing argument to the jury. These charts purported to graphically show the government's case based upon its version of the evidence. Most of the data on the charts were taken from the evidence. Ultimately it was for the jury to determine whether they truly portrayed the

[fol. 352] evidence. Their use was no more than an argument which the jury was of course free to reject or accept in its discretion. We can find no error in their use.

The judgments are affirmed.

In United States Court of Appeals for the Tenth Circuit

Judgment, No. 4685—January 21, 1954

Forty-seventh Day, November Term, Thursday, January 21st, 1954. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that Marion L. Holland, appellant, surrender himself to the custody of the United States Marshal for the District of Colorado, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

In United States Court of Appeals for the Tenth Circuit

Judgment, No. 4685—January 21, 1954

Forty-seventh Day, November Term, Thursday, January 21st, 1954. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

[fols. 353-373] Petition for Rehearing covering 3 pages—Filed January 29, 1954— omitted from this print.

It was Denied, and nothing more by Order—February 5, 1954.

[fol. 374] In United States Court of Appeals for the Tenth Circuit

Order Denying Petition for Rehearing—February 5, 1954

These causes came on to be heard on the petition of appellants for a rehearing herein and were submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

On February 8, 1954, an order of the United States Court of Appeals was entered staying the mandates of the said court to March 7, 1954, under provision of paragraph 3 of rule 28 of said court.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 375] Supreme Court of the United States, October Term, 1953

No. 650

Marion L. Holland and Ethel E. Holland, Petitioners,

vs.

United States of America

Order Allowing Certiorari—Filed June 7, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1953

No. [redacted] 37

MARION L. HOLLAND AND ETHEL E. HOLLAND, *Petitioners*,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM 1953

No.

MARION L. HOLLAND AND ETHEL E. HOLLAND, *Petitioners*,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners, Marion L. Holland and Ethel E. Holland, by their counsel, pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Tenth Circuit, affirming the judgments of the United States District Court for the District of Colorado.

OPINIONS BELOW

The District Court wrote no opinion. The opinion of the Court of Appeals (R. 341-352) is reported at 209 F. 2d 516.

JURISDICTION

The judgments of the Court of Appeals were entered on January 21, 1954 (R. 352). An order denying a petition for rehearing was entered on February 5, 1954 (R. 74). An order staying the mandates of the Court of Appeals to March 7, 1954, was entered on February 8, 1954 (R. 374). On March 3, 1954, an order was entered by Mr. Justice Clark extending the time for the filing of a petition for writ of certiorari to March 22, 1954. On March 5, 1954, an order was entered by the Court of Appeals staying its mandates until March 22, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254.

QUESTIONS PRESENTED[1]

1. Absent any evidence of any specific unreported item of income, of any undisclosed source of income, or of any improper or unallowable deduction, may a criminal conviction for tax evasion, based entirely on a net worth computation, be sustained where the Government has failed to establish with reasonable certainty the net worth starting point, omitting from such starting point, among other things, substantial stock holdings as well as a critical item of cash, the existence or non-existence of which was admitted by the Government's principal witness to be a matter of doubt?

2. Where a taxpayer's books and records are complete and admittedly do not contain a single error which would result in an understatement of taxable income, may the Government substitute a different method of accounting,

[1] In the event that this petition is granted petitioners would desire to present for the Court's consideration the following additional questions.

1. In a criminal tax evasion prosecution based upon net worth expenditures computations, is the Government required to prove that the taxpayer received *taxable* income in excess of that reflected on his income tax return and that a tax is due and owing?

2. Was the evidence sufficient to sustain the conviction of either of the petitioners?

in this case the net worth method, and rely upon its net worth computation as the sole evidence to support a tax evasion prosecution?

3. (1) Did the lower court improperly limit the Government's burden of proving the crime charged to that of merely discrediting the taxpayer's extra-judicial statement relating to the opening net worth?

(2) May the Government shift to the taxpayer the burden of establishing the items which should or should not be included in the taxpayer's opening net worth?

4. In a criminal tax evasion prosecution based entirely on circumstantial evidence, may the trial court refuse to give the jury any instruction whatsoever to the effect that the defendant must be acquitted if the proof is not such as to exclude every reasonable hypothesis other than that of guilt?

5. May the trial court refuse to instruct the jury upon the section of the statute which forms the basis of the indictment?

6. Is it proper to instruct the jury that the reasonable doubt which would require a verdict of acquittal in a criminal case is the "kind of doubt" which the jury "*might be willing to act upon* in their more serious and important affairs", as distinguished from an instruction to the effect that the doubt must be of a kind which would lead the jury *to hesitate to act* or *refrain from acting*?

STATUTES INVOLVED

Internal Revenue Code:

Sec. 41. General Rule.

> The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in

keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. (26 U.S.C. 1946 ed., Sec. 41)

Sec. 145 (b). Penalties.

Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (26 U.S.C. 1946 ed., Sec. 145 (b).

STATEMENT

The petitioner Marion L. Holland, was indicted under Section 145 (b) of the Internal Revenue Code for willfully and knowingly attempting to evade and defeat income taxes for the years 1946 and 1947 by filing or causing to be filed false and fraudulent income tax returns. (R. 7-8).

Petitioner and his wife, petitioner Ethel E. Holland, were indicted under Section 145 (b) of the Internal Revenue Code for willfully and knowingly attempting to evade and defeat income taxes for the year 1948. Petitioner Marion L. Holland, was acquitted as to the years 1946 and 1947. Both petitioners were convicted on the

charge that they had willfully attempted to defeat and evade income taxes for the year 1948 (R. 8-9, 12).

The nature of the Government's case was described by the Court of Appeals as follows (R. 342):

> The returns for each of the prosecution years were prepared by a tax accountant from books and records kept by him from information furnished by appellants. There is no contention that the returns do not accurately reflect all of the income shown on the books and records maintained by the taxpayers in the course of their business as owners of a hotel and restaurant in Golden, Colorado. There is no direct proof of any specific unreported item of income or undisclosed sources of income, or that any items of expense claimed as deductions were not legitimate and allowable. The government's case rests solely on the circumstances of increased net worth established by record purchases and expenditures during the prosecution period to prove a substantial understatement of taxable income for those years.

During the years 1946, 1947 and 1948 the petitioners operated a hotel in Golden, Colorado, which was acquired by Mr. Holland on April 1, 1946.

A joint tax return was filed by Marion L. Holland and Ethel E. Holland for the year 1948, reporting income of $11,211.42, with a total tax paid thereon of $1,532.52 (R. 251). This return, as were the individual returns filed by petitioner Marion L. Holland for the years 1946 and 1947, was prepared by Dwight Dulaigh, a tax consultant, from the books and records of the petitioners which he kept (R. 152). In addition to the permanent books and records, a daily record showing disbursements and receipts in cash and by check for the operation of the hotel was supplied to Mr. Dulaigh by the petitioners for the purpose of computing their taxable income (R. 153). Not only the permanent books and records of the petitioners, but also the daily cash reports which were prepared each day, were all available to the Government during its investiga-

tion, and to the court during the trial (R. 88, 89, 159, 161). Attached to the daily report sheets were cash "paid-out" slips representing receipts for whatever cash was paid out for any particular item (R. 159-161). These receipts were also available to the Government. When an expenditure was made, not by cash but by check, there was a stub and a cancelled check to show the nature of the expenditures (R. 159-161). These checks were also available to the Government (R. 159-161). The record is destitute of any evidence of any specific unreported income, of any undisclosed source of income, or of any improper or unallowable expenditure (R. 342). The record is similarly devoid of any evidence that petitioners' books and records were incomplete or inadequate for the purpose of truly reflecting taxable income on the basis of the method of accounting employed by the petitioners (R. 342). The only inaccuracy relating to petitioners' income tax returns resulted in an overstatement of petitioners' income in that they failed to claim depreciation with respect to certain items of hotel equipment and fixtures purchased between March 19, 1948, and May 12, 1948. The fact of the purchases, however, was reflected in petitioners' checks (R. 158, 160-161).

The Government's case was based entirely upon net worth computations. The Government fixed the petitioners' opening net worth on the 1st day of January, 1946 at $19,152.59, consisting of bank account balances in the amount of $2,152.09, corporate stock having a cost basis of $29,650.00, less certain liabilities (R. 181). Based on record purchases and expenditures and starting with the figure of $19,152.59, the Government purported to show an increased net worth for the year 1946 in the amount of $54,863.09; for the year 1947 in the amount of $29,516.17; and for the year 1948, the year now involved, in the amount of $28,743.62 (R. 180-85). The indictment relating to the year 1948 charged the petitioners with understating their

income for that year by approximately $18,000, resulting in an asserted unpaid tax liability of $7,518.88 (R. 342).

The petitioners did not take the stand on their own behalf. They did, however, give to the Government investigator during the course of the investigation certain sworn statements in which they fixed their net worth on January 1, 1946, as $156 or $157 thousand (R. 71-72), consisting of $104,000 in cash accumulated prior to December 22, 1933 (R. 71-72, 82, 303); $9,000 in cash accumulated subsequently from salaries (R. 71), and the balance in corporate stock (R. 71). The Government sought to meet its burden of proof by introducing evidence as to certain visible assets and liabilities on January 1, 1946, by introducing evidence of subsequent expenditures and purchases, by introducing the sworn statements above referred to, and by introducing circumstantial evidence relating to the petitioners' past financial history and tending, according to the Government's theory, to show that the petitioners were in fact not affluent during the early years involved and could not have accumulated a cash fund (R. 343-347).

In computing the petitioners' opening net worth on January 1, 1946, the Government included no part of the $113,000 cash fund claimed by the petitioners to have existed at that time in their extra-judicial statements (R. 180-181). The only corporate stock included in the net worth of petitioners on January 1, 1946, was that stock, the subsequent sale of which was reflected in petitioners' income tax return (R. 180-181, 347).

The Government's special agent who conducted the investigation stated that the petitioner Marion L. Holland had told him that part of the cash fund which he had accumulated consisted of money obtained when he turned in about $10 to $20 thousand in gold to various banks pursuant to the President's call. According to the Government's special agent the petitioner identified the banks

by name, which included the Colorado National Bank. The special agent stated that he did not inquire at any of these to determine whether or not gold was in fact turned in for cash by the petitioners (R. 86-87). The petitioner had further indicated to the special agent during his investigation that a large part of the cash accumulated was a result of real estate transactions in the 1920's when he was buying and selling real estate at a profit in Denver County (R. 93-94). The Government's special agent testified that he personally did not check into the records of the County Clerk and Recorder of Denver County to determine which properties were bought and sold by Mr. Holland (R. 94), and that he did not know whether anyone else had made such a check. The petitioner further had told the Government's special agent that approximately $15,000 in cash was accumulated as a result of certain restaurant sales. The special agent testified that he had made no check of the records to determine the number of sales or the selling price (R. 99).

With respect to the currency, no part of which was included by the Government in its opening net worth statement, the Government's special agent testified as follows:

> *The only question of cooperation which I have in mind was whether they always told us the truth about their currency, or not.* (R. 85)

With respect to petitioners' security transactions, Mr. Glenn W. Davis, Cashier of the United States National Bank of Denver, testified for the Government that his bank made loans to Mr. Holland from 1942 to 1946 (R. 25); that these loans were secured by a pledge of corporate stocks (R. 26); that at the end of the year 1945, the outstanding balance on the loans was secured by the following corporate securities (R. 26-30):

Date of Pledge	Shares Pledged	Corporation	Record
1- 3-42	300	Southern Pacific Company	26
5-27-42	200	Midland Steel	27
5-27-42	200	Curtis Publishing Company	27
5-27-42	100	Nash-Kelvinator	27
5-27-42	100	Commercial Credit	27
7- 3-42	100	Columbia Broadcasting Company	27
12-29-42	100	Midland Steel	27
1-25-43	100	20th Century Fox	27
7-27-43	100	Midland Steel	27
7-27-43	100	20th Century Fox	27
1- 6-44	400	20th Century Fox	27
3- 6-44	100	20th Century Fox	28
9- 5-44	500	United Gas	28
9- 5-44	1000	Commonwealth & Southern	28
10-13-44	50	United Gas	28
10-28-44	100	Certainty Products	28
11- 8-44	600	Certainty Products	28
5- 1-45	200	20th Century Fox	28
5- 1-45	100	Sinclair Oil	28
12-14-45	100	Sinclair Oil	28

Mr. Elmer C. Penny, Vice-President of the Wyoming National Bank at Casper, Wyoming (R. 140-144), a Government witness, testified that his bank had made a loan to Mr. Holland, in the name of "Francis M. Monroe" on July 18, 1938, in the sum of $1,450.00 (R. 141); that the loan was secured by 200 shares of Paramount Pictures Corporation stock and 100 shares of New York Central Railroad stock (R. 141); that the loan was paid July 29, 1948 (R. 141); that a second loan was made September 6, 1938, in the sum of $1,070.92 (R. 141-142); and that this loan was secured by 100 shares of New York Central Railroad stock (R. 141) and 100 shares of Southern Pacific Railroad stock (R. 142), and was paid September 15, 1938 (R. 142).

Mr. Robert B. Bryans, Vice-President of the Casper National Bank (R. 130-132), a Government witness, testified that his bank had made eight loans (R. 131) to Mr. Holland from September 1937 to April 1938 ranging from $200.00 to $2,194.38 (R. 131). All these loans were secured by stock as follows (R. 131-132):

Date of Pledge	Shares Pledged	Corporation	Record
9-15-37	50	20th Century Fox	131-132
3- 7-38	100	Warner Bros.	131-132
3- 7-38	100	Warner Bros.	131-132
9-27-38	100	North Central Railway	131-132
10-15-38	100	Western Union	131-132
12-30-38	50	Holly Sugar	131-132
12-30-38	300	Nash Kelvinator	131-132

Mr. George C. Bodley, the special agent of the Bureau of Internal Revenue, testified as follows (R. 95, 96):

> Q. So that before January 1, 1946 he had bought and sold at a profit many shares of corporate stock, is that right?
>
> A. Yes, he did. His greater purchases were still on hand in 1946. He held stock then.

The only proof in the record of the actual sale of any portion of the corporate stock owned by petitioners is reflected in Schedule "D" (R. 239) attached to the income tax return of Mr. Holland for the year 1946. It is there indicated that on February 2, 1946, blocks of 20th Century Fox Film stock and blocks of Midland Steel Products Company stock were sold for a total of $52,151.78. Schedule "D" does not recite the number of shares sold.

With respect to the failure of the Government to account for all of the stock which its witnesses had indicated was in existence on or at some time before January 1, 1946, the Court of Appeals stated as follows:

> . . . Subsequent returns for the period in question did not reflect the sale of any stock. If, therefore, any stocks remained unsold in 1946, they must be assumed to have remained in his custody and could therefore have no bearing on his net worth as established by purchases and expenditures. (R. 347)

The Government's case against petitioner Ethel E. Holland was based solely on the theory that any unreported income must have been the result of an understatement of gross receipts; that the petitioner Ethel E. Holland pre-

pared the daily sheets showing the gross receipts and turned them over to the bookkeeper; and that, therefore, the evidence was sufficient for the jury to conclude that Mrs. Holland had violated the statute, notwithstanding the failure of the Government to demonstrate a single discrepancy in any daily report prepared by Mrs. Holland (R. 193, 198).

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals raises several questions of substantial importance, particularly in the prosecution of criminal tax evasion cases, and is in conflict with a number of decisions of other Courts of Appeals.

(a) The decision of the Court of Appeals is in conflict with decisions in three other circuits holding that where the prosecution attempts to establish an understatement of income by the net worth method, the case should not be submitted to the jury if the starting point net worth is not definitely established. *Bryan* v. *United States*, 175 F. 2d 223 (CA 5), affirmed without considering the point in issue here, 338 U. S. 552; *United States* v. *Fenwick*, 177 F. 2d 488 (CA 7); *United States* v. *Calderon*, 207 F. 2d 377 (CA 9) petition for a writ of certiorari now pending before this Court (No. 577). *In the Calderon petition the Government states that the Calderon case is "inconsistent in principle with [the] holding" in the case at bar* (p. 9, *Government's Petition*).

(b) The decision of the Court of Appeals conflicts in principle with the decision of the United States Court of Appeals for the Ninth Circuit in *Remmer* v. *United States*, 205 F. 2d 277, reversed on other grounds, 22 L. W. 4142. Contrary to the decision below, the Court of Appeals in the *Remmer* case, while upholding the taxpayer's conviction, expressly recognized the principle, that "The net worth method of computing income may be used only where a taxpayer does not keep books or such books are inade-

quate in that they do not clearly reflect income." (p. 286) In this respect the decision is further in conflict with decisions of the United States Tax Court, *Glackman* v. *Commissioner*, 10 T.C.M. 1132 (1951); *Thomas A. Taley* v. *Commissioner*, Tax Court Docket Nos. 33,140 and 33,141, June 30, 1953, 20 T.C. No. 101, and in probable conflict with applicable decisions of this Court, *Pacific National Co.* v. *Welch*, 304 U. S. 191; *United States* v. *American Can Company*, 280 U. S. 412.

(c) In limiting the Government's burden to that of discrediting a defendant's extra-judicial statement, thus requiring the defendant to establish his own net worth starting point, the decision of the Court of Appeals marks a significant departure from established principles of proof in criminal cases; and is inconsistent in principle with the dicta contained in recent decisions of the Courts of Appeals for the Third and Fifth Circuits. *United States* v. *Caserta*, 199 F. 2d 905 (CA 3); *United States* v. *Demetree*, 207 F. 2d 892 (CA 5).

(d) The decision of the Court of Appeals is in conflict with decisions of the Courts of Appeals for the Fifth, Sixth, Seventh and Eighth Circuits holding or acknowledging the principle that where a criminal case is based entirely upon circumstantial evidence, the trial court is required to give some form of instruction to the general effect that the evidence must be inconsistent with every reasonable hypothesis but that of guilt. *Garst* v. *United States*, 180 Fed. 339, 343 (CA 4); *Stutz* v. *United States*, 47 F. 2d 1029 (CA 5); *Anderson* v. *United States*, 30 F. 2d 485, 487 (CA 5); *Bryan* v. *United States*, *supra*, p. 226; *Strickland* v. *United States*, 155 F. 2d 167, 168 (CA 5); *McLendon* v. *United States*, 13 F. 2d 777, 779 (CA 6); *Epstein* v. *United States*, 174 F. 2d 754, 769 (CA 6); *United States* v. *Fenwick*, 177 F. 2d 488, 490 (CA 7); *Gurera* v. *United States*, 40 F. 2d 338, 340 (CA 8); *Banks* v. *United States*, 204 F. 2d 666, 672 (CA 8).

(e) The decision of the Court of Appeals is in conflict with decisions of the Courts of Appeals for the Third and Ninth Circuits holding, contrary to the decision here, that the trial court is required to instruct the jury with respect to the statute governing the offense and not merely as to the factual elements set forth in the indictment. *United States* v. *Pincourt*, 159 F. 2d 917 (CA 3); *United States* v. *Levy*, 153 F. 2d 995 (CA 3); *United States* v. *Noble*, 155 F. 2d 315 (CA 3); *Morris* v. *United States*, 156 F. 2d 525 (CA 9).

(f) The decision of the lower court upholding an instruction on reasonable doubt as the "kind of doubt" the jury "*might be willing to act upon* in their more serious and important affairs" is in conflict with every State court appellate decision in which such instruction has been considered. *Commonwealth* v. *Miller*, 139 Pa. 77, 21 Atl. 138; *State* v. *Rover*, 11 Nev. 343; *People* v. *Bemmerly*, 87 Cal. 117, 25 Pac. 266; *Lovett* v. *State*, 30 Fla. 142, 11 So. 550, all to the effect that reasonable doubt is that doubt which would lead reasonable men to *refrain from acting* or *hesitate to act*, rather than the converse set forth in the instruction here.

The several questions raised in this petition are of substantial importance in the proper administration of the criminal laws and are of particular importance in the administration and enforcement of the Federal Revenue statutes. The precise questions are arising with great frequency among the lower courts as a result of the increasing tendency of the Internal Revenue Service and the Department of Justice to resort to and to rely wholly upon the net worth expenditures method as a basis for tax evasion prosecutions. In the light of the inherent crudeness of the net worth method as a basis for criminal conviction, and the lack of uniformity among the lower courts, a clarification of the basic principles to which the courts must adhere in such cases is now required by this Court.

ARGUMENT

A. The Necessity for Establishing the Net Worth Starting Point With Reasonable Certainty.

The Government completely failed to prove the petitioners' net worth starting point with reasonable certainty—a requirement that was particularly incumbent upon it in the light of the fact that there was absolutely no evidence of any specific unreported item of income, of any unallowable deduction, or of any undisclosed source of income (R. 342). The Government fixed the petitioners' net worth as of January 1, 1946, at $19,152.59, from which it purported to demonstrate unaccounted for increases in net worth for the years 1946, 1947, and 1948. The figure of $19,152.59 admittedly included only those corporate stocks, the subsequent sale of which was reflected in petitioners' income tax returns (R. 347). In fixing petitioners' opening net worth on January 1, 1946, the only cash included by the Government as an asset was the sum of $2,153.09, consisting of balances in two bank accounts (R. 181). In the petitioners' extra-judicial statement made to the special agent of the Bureau of Internal Revenue, they claimed to have had on January 1, 1946, approximately $113,000 in currency (R. 71-73). The lower courts, as well as the Government, took the view that "the ultimate and precise issue" was whether the jury believed beyond a reasonable doubt "that there was no such fund in existence on January 1, 1946." According to the Court of Appeals the petitioners' "guilt or innocence turned on a resolution of those issues (relating to the cash fund)." (R. 351) Notwithstanding this, the special agent for the Bureau of Internal Revenue—the chief Government witness—testified with respect to the petitioners' currency as follows (R. 85):

> "The only question of cooperation which I have in mind was whether they always told us the truth about their currency, *or not*." (Emphasis added)

In view of the doubt specifically expressed by this witness with respect to this critical item, it is apparent that the Government failed to sustain the burden, imposed upon it in all pure net worth expenditure cases, of proving the taxpayer's net worth starting point with reasonable definiteness. With respect to this item of currency the present case is similar to *Bryan* v. *United States, supra*, where the Court of Appeals, in reversing the conviction of the lower court, observed (p. 226):

> "But we cannot escape the fact that Mr. Marquis, the auditor, frankly admitted that he did not know whether his computation contained all the assets of the Defendant *or not*." (Emphasis added)

Furthermore, the evidence produced by the Government's witnesses clearly established that either on or before January 1, 1946, the petitioner Marion L. Holland was the owner of hundreds and possibly thousands of shares of stock (R. 29-30; 141-142; 130-132). With respect to this stock, the special agent of the Bureau of Internal Revenue testified that the petitioners' "greater purchases were still on hand in 1946." (R. 95-96) Having proven through its own witnesses the existence of these securities on or before January 1, 1946, the Government completely failed to take into consideration any securities except those, the disposition of which was reflected in the petitioners' income tax return for the year 1946 (R. 239, 347). The Government did not even take into consideration in its net worth computations the 300 shares of stock which the record irrefutably established were owned by the petitioners as of July 29, 1948. The court below attempted to meet this obvious defect by making the following observation (R. 347):

> "The representative of the bank where the stocks were pledged for loans testified that all the stock pledged for collateral was liquidated or withdrawn early in 1946, and thereafter all other loans were secured by deeds of trust. Subsequent returns for the period in

> question did not reflect the sale of any stock. If, therefore, any stocks remained unsold in 1946, they must be assumed to have remained in his custody and could therefore have no bearing on his net worth as established by purchases and expenditures."

In thus disposing of the petitioners' contention the court below ignored the principle that the Government must prove the opening net worth with reasonable certainty. Certainly the fact that the stock was liquidated *or withdrawn* does not establish its non-existence on January 1, 1946. Nor is there any basis for the court's assumption that any stock which had not been sold prior to 1946 necessarily remained in the petitioners' custody and had "no bearing on his net worth." Unless a gain was realized on a subsequent disposition of a stock no duty would have been imposed upon the petitioner to report the transaction on his income tax return. Moreover, the stock could have served as collateral for the borrowing of additional funds. The important consideration, however, is that the court below found it necessary to fill in an obvious gap in the Government's case by speculating as to the possible subsequent disposition of securities which were proven to have existed on or before January 1, 1946, and which were neither accounted for by the Government nor taken into consideration in the net worth statement. With respect to these securities the present case is similar to *United States* v. *Fenwick*, *supra*, where the Court of Appeals, in reversing the lower court, observed (p. 491):

> "The agent testified that defendant had certain corporate stock but the prosecution offered no proof as to the amount owned by defendant in 1942 or whether any part or all of it was sold in 1943 or in 1944."

In addition to the critical affirmative deficiencies apparent in the Government's net worth starting point, the evidence also established that the Government's investigation was defective. The special agent who conducted the investiga-

tion stated that he made no inquiry at the banks where petitioners had informed him they had turned in gold for cash (R. 86-87); that he did not check into the records of the County Clerk of Denver County to determine whether or not, in fact, properties were bought and sold by Mr. Holland at a profit as indicated in his statement (R. 94); that he made no check of the records to determine whether or not it was true that petitioners had realized substantial profits as a result of certain restaurant sales (R. 99).

The courts have recognized that the proof of a criminal tax evasion case by reliance on the net worth method is fraught with potential peril. The divergence of approach, however, by the various United States Courts of Appeals has become extreme. *The Government has expressly stated in the Calderon petition for certiorari previously referred to that the Calderon case is "inconsistent in principle" with the holding in the present case (p. 9, Government's Petition).* The present case is also in sharp conflict with *Bryan* v. *United States*, *supra*, and *United States* v. *Fenwick*, *supra*, and is inconsistent in principle with the dicta in *United States* v. *Caserta*, 199 F. 2d 905, 907 (CA 3), and *Demetree* v. *United States*, 207 F. 2d 892, 893-894 (CA 5).[2]

The assumption that the difference between the amount of assets at the beginning and end of a particular year constitutes taxable income is a somewhat speculative assumption under all circumstances. The assumption certainly cannot be made when the special agent in charge of the investigation admits doubt as to the existence or non-existence of the critical currency item. It certainly

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[2] "Sometimes, without adhering to the essentials of the method, that the net worth at the beginning as well as the end of the period be shown, the proof comes in and the case is submitted with a complete gap in the proof as to the beginning of the period.

"This kind of latitudinous allowance of the admission and use of conclusions as evidence and the submission of the case to the jury without a scrupulous adherence to the theory has resulted in a tendency to accept, if not in the complete acceptance of, the idea that in a case tried by this method, ordinary rules of proof may be relaxed if not disregarded. . . ."

cannot be made when the Government's own evidence establishes the existence of several hundred or thousand shares of securities and fails to account for the disposition of these securities or to take them into consideration in its net worth computation.

The time has come to reiterate and give force to the principle that the preservation of a defendant's constitutional rights is of greater importance than the easing of the Government's difficulties in a tax evasion prosecution where it has no direct evidence of fraud.

B. The Impropriety of Resort to the Net Worth Expenditures Method Where the Taxpayer's Books and Records Are Complete and Are Not Shown to Contain a Single Inaccuracy Which Would Result in the Understatement of Taxable Income.

The court below made the following relevant observation with respect to the nature of the present case:

> "The returns for each of the prosecution years were prepared by a tax accountant from books and records kept by him from information furnished by appellants. There is no contention that the returns do not accurately reflect all of the income shown on the books and records maintained by the taxpayers in the course of their business as owners of a hotel and restaurant in Golden, Colorado. There is no direct proof of any specific unreported item of income or undisclosed sources of income, or that any items of expense claimed as deductions were not legitimate and allowable. The government's case rests solely on the circumstances of increased net worth established by record purchases and expenditures during the prosecution period to prove a substantial understatement of taxable income for those years."

In addition to the permanent books and records, all the daily records showing disbursements and receipts in cash and by check for the operation of the petitioners' business were available to the Government during its investigation and to the Court during the trial. No inaccuracy was shown

in any of the books or records of a character which would have resulted in the understatement of taxable income. Under such circumstances, there was no evidence upon which the Government's case could have been properly submitted to the jury, for resort to the net worth method of computing income was inappropriate.

In upholding the conviction here based entirely on net worth evidence, the court below ignored the requirements of Section 41 of the Internal Revenue Code. Section 41 by its terms limits the authority of the Government to deviate from the method of accounting selected by the taxpayer to situations where no method of accounting has been employed in keeping a taxpayer's books or where the method employed does not reflect taxable income. While the position of the petitioners here is in many respects similar to that taken by the petitioner in the *Remmer* case, *supra*, the Court of Appeals in the *Remmer* case, contrary to the decision here, expressly recognized the principle that "the net worth method of computing income may be used only where a taxpayer does not keep books or such books are inadequate in that they do not clearly reflect income . . ." (p. 286). The same position appears to have been adopted by the Tax Court which, in *Glackman* v. *Commissioner*, *supra*, after citing cases holding that there may be resort to the net worth method where the taxpayer fails to produce adequate records, made the following statement:

> "This case, however, differs from those cases and others in which the increase in the use of net worth has been sustained. In this case, the petitioner's principal source of income was from sales at his barroom. As to those sales, he had records and the respondent did not find error in them in determining the deficiency, nor through any evidence at the trial, although there was considerable examination of witnesses as to the accuracy of the records."

Further, the precise question here involved appears to have been raised in *Olson* v. *United States*, 191 F. 2d 985

(CA 8), and *Chang Sing Ho* v. *United States*, 186 F. 2d 574 (CA 9). In the *Olson* case the taxpayer "objected to the evidence of net worth on the ground that it 'constituted a mere substitute method in the absence of books, the government having already established that there were adequate books kept for the year' " (p. 987). The Court of Appeals in stating that it found no merit in this assignment of error made the following statement:

> "As the defendant kept a set of books for 1946 the government in the first instance determined his correct income and his attempt to evade the tax on it on the basis of the books. But it rightly sought *to corroborate and check its conclusion* by reference to other available evidence tending to support its accusation and to show the same tax evasion . . ." (p. 987). (Emphasis added)

The clear implication of the Court's observation is that where the taxpayer keeps adequate books, the net worth computation may be used only as corroborative evidence. In the *Chang Sing Ho* case, the Court of Appeals for the Ninth Circuit avoided passing upon the issue by holding that "in any event there was competent evidence that the books and records . . . were basically inadequate" (p. 575).

This Court, while not dealing with the precise question involved here, has held that even in situations where individual items or entries upon the books are shown to be in error, the Government is not thereby permitted to substitute a method of accounting different from that employed by the taxpayers. *United States* v. *American Can Co., supra; Pacific National Co.* v. *Welch, supra.*

In the light of the confusion among the lower courts and the increasing recurrence of the question, it is important that this Court consider and determine whether the Government may base a criminal tax prosecution entirely on net worth computations where the taxpayer keeps adequate books and records, where there are no errors on the books which would result in the understatement of income,

and where there is no specific evidence of unreported income, of unallowable deductions, or of undisclosed sources of income. The danger in resorting to the so-called net worth expenditures method under such circumstances is perhaps best illustrated in connection with the conviction here of Mrs. Holland. The Government's case against her was based on the following assumptions:

a. That there was an unaccounted for increase in net worth for the year 1948;

b. That the unreported income must have been the result of an understatement of gross receipts, there being no other potential source of income; and

c. That since the petitioner Ethel E. Holland prepared the daily sheets showing the gross receipts and turned them over to the bookkeeper, she must have at least aided and abetted a violation of Section 145(b) (R. 193, 198).

It is unlikely that in any other field of criminal law a conviction would be allowed to stand on such a pyramid of speculation.

C. The Burden of Proof Was Improperly Shifted From the Government to the Taxpayer.

The Government viewed its burden in this case as that of disproving or discrediting the extra-judicial statements made by the petitioners to the investigators prior to the trial. In an effort to accomplish this the Government introduced a wealth of circumstantial evidence tending, under its theory, to discredit the petitioners' statements to the effect that they had accumulated a substantial cash fund in prior years. A reading of the trial court's instruction, as a whole, leaves no doubt but that the effect of the instruction was to indicate to the jury that the petitioners' guilt or innocence turned upon whether the

Government had, in fact, succeeded in discrediting the petitioners' extra-judicial statements as to the existence of a cash fund. Thus, the trial court instructed the jury as follows (R. 212-13):

> ". . . Some emphasis was made in the arguments to you, Ladies and Gentlemen of the Jury, that there was no evidence here that any statement on the income tax returns for '46, '47, and '48 has been shown to be false. *That isn't the issue in this case.* The issue in this case is whether or not these defendants filed those income tax returns, reporting the income on those returns and the tax computed from it, knowingly and wilfully not including gross receipts from the business which the Government claims they earned, and which the Government claims they didn't report.
>
> "The government proceeds upon the theory that there was no such cash fund of a hundred and four thousand dollars, or a hundred and thirteen thousand dollars, and that the increases in their net worth each year were the result of purchases from receipts earned in the taxable years in question from that business. That is the government's position."
>
> • • • • • • •
>
> "If you believe, Ladies and Gentlemen of the Jury, and are satisfied beyond a reasonable doubt that the Government's evidence that Mr. Holland and Mrs. Holland did not have that cash fund, or any other source of the money with which they increased their net worth except the gross receipts of this business in the taxable years in question then you should bring in a verdict of guilty, if you also find Ladies and Gentlemen of the Jury that they have proved to your satisfaction beyond a reasonable doubt, all of the essential and material elements of the charges in this indictment." (Emphasis added)

The trial court, in effect, made the issue of guilt or innocence depend solely upon whether the petitioners did or did not possess a cash fund sufficient to explain their subsequent purchases. Accordingly, the trial court narrowed the burden imposed upon the Government from that

of proving all of the essential elements of Section 145 (b) to that of merely discrediting the petitioners' extra-judicial statement as to the accumulation of a cash fund. The court below specifically adopted the view of the trial court in stating that it "agree[d] with the trial court that the ultimate and precise issue in the case was whether they believed beyond a reasonable doubt from the established circumstances that there was no such fund in existence on January 1, 1946" (R. 351). The view expressed by the lower courts is clearly erroneous. By making an extra-judicial statement prior to a trial a defendant neither limits the burden of the Government to that of discrediting his statement, nor assumes himself the burden of proving the accuracy of the statement or of proving his opening net worth. The decision below is inconsistent with the dictum of the Court of Appeals for the Third Circuit in *United States* v. *Caserta*, 199 F. 2d 905, where the court, in disapproving of decisions similar to that rendered here, said (p. 907):

> "The cases show, however, a rather *surprising rule* that when the discrepancy between increased net worth and reported income is shown, the burden of explanation shifts to the taxpayer, at the same time repeating the usual criminal law rule that the burden throughout a criminal case is upon the prosecution." (Emphasis added)

To the same effect, see *United States* v. *Demetree*, 207 F. 2d 892, 894 (CA 5).[3]

In view of the confusion among the Courts of Appeals as to the burden of proof in criminal tax prosecution cases

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[3] ". . . Further and more prejudicial to a defendant, there has grown up a kind of ancillary theory that the government, by introducing proof of deposits, expenditures, etc., having put up what it calls a prima facie case, the defendant finds himself jockeyed out of the position the law affords him, of insisting that the government establish his guilt by legal and credible evidence beyond a reasonable doubt. This is accomplished by requiring him to prove himself innocent by assuming the burden of overcoming the prejudicial effect of the mass of exhibits, estimates, conjectures, and conclusions which the government has been allowed to get into the record, upon the apparent theory that it is up to the defendant to explain all of it away as part of his burden to prove his innocence."

based upon net worth expenditures computations, clarification by this Court is required.

D. The Lack of a Proper Instruction on Circumstantial Evidence.

In the present case, the evidence being entirely circumstantial, the petitioners requested the trial court to instruct the jury to the effect that the evidence must be inconsistent with their innocence, excluding every reasonable hypothesis other than that of guilt (R. 227-228). The trial court not only refused to give such an instruction but gave no instruction which adequately defined circumstantial evidence or properly explained the nature or quality of such evidence so as to guide the jury in its evaluation thereof. Instead, the trial court concluded its circumstantial evidence instruction (R. 210-212) as follows:

> "You see this is a complicated case, Ladies and Gentlemen of the Jury, because there is a little bit of circumstantial evidence here, and a little bit of circumstantial evidence over there, and it's going to be your duty, Ladies and Gentlemen of the Jury, to arrive at your verdict on the basis of the facts proven to your satisfaction beyond a reasonable doubt, and also on the basis of the inferences which reasonably may be drawn from those various facts and circumstances in evidence." (R. 212)

This instruction not only failed to explain adequately the circumstantial evidence rule, but might actually have suggested to the jury that the requirement for proof beyond a reasonable doubt did not apply to the inferences which might reasonably be drawn from circumstantial evidence. The court below held that the trial court's instruction was satisfactory, there being no " 'inexorable formulas on the subject' " (R. 351).

The divergence among the circuits with respect to the application of the circumstantial evidence rule has recently been called to this Court's attention in *McFee* v. *United*

States, 206 F. 2d 872 (CA 9), cert. denied 22 LW 3236. However, in the *McFee case*, unlike this case, the trial court while not instructing the jury in the form requested by counsel, nonetheless instructed the jury as follows:

> "Therefore you should consider whether or not the Government has precluded every reasonable source of these funds except earnings for the years charged."

And the Court of Appeals in the *McFee* case concluded that the instruction as given stated the law "with much more clarity and force" than the objection made by petitioner. 206 F. 2d 872, 877. The present case is not one where the trial court simply refused to give a technical form of instruction requested by counsel, but rather is a case where the trial court utterly failed to instruct adequately on circumstantial evidence in any form. This being so, and in view of the nature of the evidence upon which the conviction was here obtained, this case offers an excellent vehicle for consideration and clarification by this Court of the so-called circumstantial evidence rule. Among the cases supporting the position of the petitioners here, and inconsistent with the decision below, are the following: *Garst* v. *United States*, 180 Fed. 339, 343 (CA 4); *Stutz* v. *United States*, 47 F. 2d 1029 (CA 5); *Anderson* v. *United States*, 30 F. 2d 485, 487 (CA 5); *Bryan* v. *United States*, *supra*, p. 226; *Strickland* v. *United States*, 155 F. 2d 167, 168 (CA 5); *McLendon* v. *United States*, 13 F. 2d 777, 779 (CA 6); *Epstein* v. *United States*, 174 F. 2d 754, 769 (CA 6); *United States* v. *Fenwick*, 177 F. 2d 488, 490 (CA 7); *Gurera* v. *United States*, 40 F. 2d 338, 340 (CA 8); *Banks* v. *United States*, 204 F. 2d 666, 672 (CA 8).

E. The Failure of the Court to Instruct on the Essential Elements of the Crime as Set Forth in the Statute.

The trial court not only refused to instruct the jury as to the statute under which the petitioners were indicted, but it completely failed to define and explain properly the

elements of the offense as set forth in the statute. In lieu thereof the trial court submitted to the jury alternative theories of fact, using as its reference point the indictment as distinguished from the statute. The court below, in sustaining the trial court in this respect stated that "the substance of each count in the indictment was recited to the jury . . . every essential element of the crimes charged was placed in issue . . . [and] the offense charged is embodied in the indictment" (R. 349). Thus the court below held that so long as an indictment states an offense, and the text or substance of the indictment is given to the jury, the trial court has fulfilled the requirement that it instruct the jury on the applicable statute. In so holding the decision here is in conflict with the decision of the Court of Appeals for the Ninth Circuit in *Morris* v. *United States*, 156 F. 2d 525, and the decisions of the Court of Appeals for the Third Circuit in *United States* v. *Pincourt*, 159 F. 2d 917; *United States* v. *Levy*, 153 F. 2d 995; and *United States* v. *Noble*, 155 F. 2d 315. In the *Morris* case, involving an alleged violation of the Emergency Price Regulation Act, the trial court failed to define the offense as set forth in the statute instructing the jury in lieu thereof with reference to the facts charged in the indictment. Even though this instruction was not assigned as error, the Court of Appeals there reversed the trial court, holding that "the trial court committed fatal error in failing to instruct the jury on the statutes and regulations defining and governing the offenses charged . . ." (p. 527) The court specifically rejected the suggestion that the requirement of an instruction on the statute could be met by reference to the indictment (Footnote 4 of the Opinion).

The decision below does find support in the decisions of the Court of Appeals for the Second Circuit in *United States* v. *Center Veal and Beef Co.*, 162 F. 2d 766, and *United States* v. *Capital Meats*, 166 F. 2d 537, cert. denied 334 U. S. 812, in which the Second Circuit refused to follow the *Morris* case. On the other hand, the Court of

Appeals for the Third Circuit specifically adopted the rule in the *Morris* case in *United States* v. *Pincourt*, *supra*, p. 919.[4] In view of the fundamental nature of the question, and the divergence of views between the Courts of Appeals for the Ninth and Third Circuits on the one hand, and the Courts of Appeals for the Second and Tenth Circuits on the other, a determination of the question by this Court is required.

F. The Trial Court's Instruction on Reasonable Doubt.

The trial court instructed the jury on reasonable doubt as follows:

> "I have used the term, Ladies and Gentlemen of the Jury, of 'beyond a reasonable doubt.' It is not to be expected that you know what the Court means by that language. So I am going to tell you what I mean. When I say that the Government must bring before you evidence which satisfies your minds beyond a reasonable doubt, the court does not mean that you should understand that the Government has the burden

---

[4] "Amendment 9 of the Regulation 445 was not explained, read or mentioned by the District Judge in his charge. Without the governing regulation being made plain to it, the jury could not have an informed judgment on the issue and the case did not go to it under the safeguards of correct procedure. Cf. Williams v. United States, 79 U.S. App. D.C. 299, 131 F. 2d 21, 22. The situation presented goes even further than the facts in the latest reported case in point, Morris v. United States, 9 Cir. 156 F. 2d 525, where the neglect to define the offense in the Court's charge was held not cured by stating to the jury what essential facts if proven would constitute a violation of a specific regulation.

"Three recent decisions of this Court, all of them in much the same type of case as the one under consideration, clearly indicate that the failure of the Trial Court to charge the applicable regulations was substantial error. The first of those opinions, United States v. Levy, 3 Cir., 153 F. 2d 995, concerned a liquor sale under the Price Control Act and its regulations. The District Judge did not charge either the statute or the regulations. As here, the defendant did not object. Despite this we deemed the error so fundamental that we reversed the judgment of the Court below, saying page 998: 'In the instant case the trial court's instructions to the jury did not contain the text of the applicable statute. They included no definite information as to the offense charged. Neither the provisions of the Price Control Act, the regulations under it, nor the substance of either, ever reached the jury. The Court and counsel of both parties were thoroughly acquainted with the law which the defendant was accused of violating, but there is nothing in the record showing that the jury was ever informed as to such prime requisite. The indictment itself states the offense charged by reference to the applicable law but does not set it out in full."

> of satisfying you beyond every doubt, to remove every doubt, leaving no doubt at all. What we are talking about is a doubt based upon reason and common sense, in the exercise of your intelligence. It is a substantial doubt, not a trivial doubt; a significant doubt, not a flimsy one; a real doubt, not an imaginary one. It's the kind of doubt, Ladies and Gentlemen of the Jury, which you folks in the more serious and important affairs of your own lives *might be willing to act upon.* Now if you feel such a doubt about the Government's case, it is your duty to acquit them." (Italics supplied)

While the precise question does not appear to have been considered by any Federal court, the State courts which have considered similar instructions have held them to be erroneous for the reason that "the kind of doubt" is not such doubt as would lead the jury to act, but is that which would lead them to refrain from acting, or to hesitate to act. Assuming, for the purposes of this petition, the propriety of a personal business test in a criminal case (*Hopt* v. *Utah*, 120 U.S. 430), the trial court nonetheless stated the proposition backwards. In *Commonwealth* v. *Miller*, 139 Pa. 77, 21 Atl. 138, the Supreme Court of Pennsylvania made the following observation with respect to a similar instruction:

> "The fifteenth assignment relates to the definition of a 'reasonable doubt.' The learned judge said: 'It is such a doubt as would influence or control you in you actions in any of the important transactions of life.' He did not say that a doubt that would cause one to pause and hesitate was, if fairly derived from the evidence, a reasonable one within the meaning of the criminal law, but that it must be one that would control one's conduct in the important transactions of life. Our actions are determined by the preponderance of considerations. We doubt, hesitate, examine, balance the argument for and against the given action, and act as the preponderance indicates. A doubt that would control our actions in the important transactions of life would be one that was so strong as not to be overcome by the balancing process. Such a doubt

would be practically an unconquerable one. It would lead us not simply to refrain from acting, but to act."

See also *State* v. *Rover*, 11 Nev. 343; *People* v. *Bemmerly*, 87 Cal. 117, 25 Pac. 266; *Lovett* v. *State*, 30 Fla. 142, 11 So. 550.

Insofar as the decision here is in conflict with every State appellate court decision in which the same problem has been considered, and no authoritative Federal decision can be found, a substantial question is presented for this Court's determination.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be granted.

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OCTOBER TERM, 1953

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UNITED STATES OF AMERICA

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REPLY BRIEF FOR THE PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 650

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Petitioners

v.

UNITED STATES OF AMERICA

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REPLY BRIEF FOR THE PETITIONERS

This Reply Brief is filed for the limited purpose of directing this Court's attention to certain factual matters set forth in the Brief for the United States in Opposition.

In their Petition for Certiorari Petitioners, in treating upon the first question, gave emphasis to two critical deficiencies in the net worth starting point upon which the

Government relied, and argued, among other things, that the decision below was thereby in conflict with decisions of other Courts of Appeals. (Pet. 14-18.) The first deficiency related to the critical currency item, the existence or non-existence of which was admitted to be a matter of doubt by the Government's chief witness. (Pet. 14.) In its Brief in Opposition the Government does not allude to this testimony of the Special Agent relied upon by the Petitioners. The second deficiency related to the hundreds and perhaps thousands of shares of stock which were shown by Government witnesses to have been in existence on or before the net worth starting point date and which were not taken into consideration or accounted for by the Government in its net worth computations. (Pet. 15-16.) The Court of Appeals attempted to meet this objection by speculating as to the probabilities of subsequent retention or disposition of the stock. The Government, in its Brief in Opposition, attempts to meet this deficiency by stating that "Mr. Holland told the agents that he sold all his securities . . . before he purchased the hotel in April 1946." (Brief in Opposition 8.) The aforementioned assertion is based upon the testimony of the Government Agents, which is in turn based upon the sworn statement made to the Agents by the Petitioner Marion L. Holland. The question and answer, as set forth in that statement, are as follows: (R. 302)

> "38. Q. Were all of your securities sold at the time you purchased the hotel, or prior to the time you purchased the hotel? A. Yes. *I'd like to correct that to I don't know. I'm not sure.*"

The Petitioners also stated in their Petition that the Government did not even take into consideration 300 shares of stock which were owned by the Petitioners as of July 29, 1948. (Pet. 15.) In its Brief in Opposition the Government has stated that the record reference to stocks held until July 29, 1948 "is clearly a mistake for 'July 29,

1938'." (Brief in Opposition 8.) The record itself is clear to the effect that the date is July 29, 1948 (R. 141) and counsel are informed that the testimony was in fact July 29, 1948. Notwithstanding this, and notwithstanding the relative unimportance of the factual statement, counsel for Petitioners, upon receipt of the Brief in Opposition, caused an independent investigation to be made outside the record to determine the true facts; and on the basis of this investigation have concluded that the date should have been July 29, 1938.[1] In view of the relative unimportance of this factual question counsel for the Petitioners would not have dwelt upon this matter in a Reply Brief except for their desire fully to discharge their obligation to the Court.

Respectfully submitted,

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[1] So far as counsel for Petitioners are aware the Government has never until the Brief in Opposition previously attempted to modify or discredit this testimony of their witness.

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The District Court wrote no opinion. The Opinion of the Court of Appeals (R. 341-352) is reported at 209 F. 2d 516.

JURISDICTION

The judgments of the Court of Appeals were entered on January 21, 1954 (R. 351). An order denying a petition for rehearing was entered on February 5, 1954 (R. 352).

An order staying the mandates of the Court of Appeals to March 7, 1954, was entered on February 8, 1954. On March 3, 1954, an order was entered by Mr. Justice Clark extending the time for the filing of a petition for writ of certiorari to March 22, 1954. On March 5, 1954, an order was entered by the Court of Appeals staying its mandates until March 22, 1954. The petition was filed on March 22, 1954, and granted on June 7, 1954 (R. 352). The jurisdiction of this Court is invoked under Title 28, USC § 1254.

QUESTIONS PRESENTED

1. Where a taxpayer's books and records are complete and admittedly do not contain a single error which would result in an understatement of taxable income, may the Government substitute a different method of accounting, in this case the net worth method, and rely upon its net worth computations as the sole evidence to support a tax evasion prosecution?

2. (a) Absent evidence of any specific unreported item of income, of any undisclosed source of income, or of any improper deduction, may a criminal conviction for tax evasion, based entirely on net worth computations, be sustained where the Government has failed to establish with accuracy the net worth starting point, omitting from such starting point, among other things, substantial stock holdings as well as a critical item of cash, the existence or nonexistence of which was admitted by the Government's principal witness to be a matter of doubt?

(b) In such a case may the trial court permit the Government to shift to the taxpayer the burden of establishing the items which should or should not be included in the taxpayer's opening net worth?

(c) In such a case may the trial court refuse to instruct the jury that it is incumbent on the Government to establish the net worth of the taxpayer on the starting point date?

(d) In such a case may the Government rely upon a taxpayer's extra-judicial statement to establish the opening net worth without corroborating evidence?

3. (a) May the trial court limit the Government's burden of proving the crime charged to that of merely discrediting the taxpayer's extra-judicial statement.

(b) Does the Government have the burden of proving that asserted increases in net worth are attributable to taxable income, or, at the minimum, of introducing evidence tending to refute the possibility that such increases are attributable to non-taxable sources—or does the taxpayer, as the lower courts in substance held, have the burden of proving that such increases in net worth are not derived from currently taxable sources?

(c) Does the Government have the burden of proving willfulness by evidence independent of its net worth computations or may the jury be allowed to infer willfulness from asserted increases in net worth?

4. Is it proper to instruct the jury that the reasonable doubt which would require a verdict of acquittal in the criminal case is the "kind of doubt" which the jury "*might be willing to act upon* in their more serious and important affairs", as distinguished from an instruction to the effect that the doubt must be of a kind which would lead the jury *to hesitate to act* or *refrain from acting?*

5. In a criminal tax evasion prosecution based entirely on circumstantial evidence, may the trial court refuse to give the jury any instruction whatsoever to the effect that the defendant must be acquitted if the proof is not such as to exclude every reasonable hypothesis other than that of guilt?

6. May the trial court refuse to instruct the jury upon the section of the statute which forms the basis of the indictment?

STATUTES INVOLVED

INTERNAL REVENUE CODE:

Sec. 41. *General Rule.*

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. (Title 26, USC 1946 ed., Sec. 41)

Sec. 145 (b). *Penalties.*

Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (Title 26 USC 1946 ed., Sec. 145 (b))

STATEMENT

The petitioner Marion L. Holland, was indicted under Section 145 (b) of the Internal Revenue Code for willfully and knowingly attempting to evade and defeat income taxes for the years 1946 and 1947 by filing or causing to be filed false and fraudulent income tax returns (R. 7-8).

Petitioner and his wife, petitioner Ethel E. Holland, were indicted under Section 145 (b) of the Internal Revenue Code for willfully and knowingly attempting to evade and defeat income taxes for the year 1948. Petitioner Marion L. Holland was acquitted as to the years 1946 and 1947. Both petitioners were convicted on the charge that they had willfully attempted to defeat and evade income taxes for the year 1948 (R. 8-9, 12).

The nature of the Government's case was described by the Court of Appeals as follows (R. 342):

> "The returns for each of the prosecution years were prepared by a tax accountant from books and records kept by him from information furnished by appellants. There is no contention that the returns do not accurately reflect all of the income shown on the books and records maintained by the taxpayers in the course of their business as owners of a hotel and restaurant in Golden, Colorado. There is no direct proof of any specific unreported item of income or undisclosed sources of income, or that any items of expense claimed as deductions were not legitimate and allowable. The government's case rests solely on the circumstances of increased net worth established by record purchases and expenditures during the prosecution period to prove a substantial understatement of taxable income for those years."

During the years 1946, 1947 and 1948 the petitioners operated a hotel in Golden, Colorado, which was acquired by Mr. Holland on April 1, 1946.

A joint tax return was filed by Marion L. Holland and Ethel E. Holland for the year 1948, reporting income of $11,211.42, with a total tax paid thereon of $1,532.52 (R. 251). This return, as were the individual returns filed by petitioner Marion L. Holland for the years 1946 and 1947, was prepared by Dwight Dulaigh, a tax consultant, from the books and records of the petitioners which he kept (R. 152). In addition to the permanent books and records, a daily record showing disbursements and receipts in cash

and by check for the operation of the hotel was supplied to Mr. Dulaigh by the petitioners for the purpose of computing their taxable income (R. 153). Not only the permanent books and records of the petitioners, but also the daily cash reports which were prepared each day, were available to the Government during its investigation, and to the court during the trial (R. 88, 89, 159, 161). Attached to the daily report sheets were cash "paid out" slips representing receipts for whatever cash was paid out for any particular item (R. 159-161). These receipts were also available to the Government. When an expenditure was made, not by cash but by check, there was a stub and a cancelled check to show the nature of the expenditures (R. 159-161). These checks were also available to the Government (R. 159-161). The petitioners further offered the Government investigators the opportunity of standing by the cash registers and checking the gross receipts in order to determine whether or not those receipts approximated those shown during the period covered by the indictment (R. 89). The record is destitute of any evidence of any specific unreported income, of any undisclosed source of income, or of any improper or unallowable expenditure (R. 342). The record is similarly devoid of any evidence that petitioners' books and records were incomplete or inadequate for the purpose of truly reflecting taxable income on the basis of the method of accounting employed by the petitioners (R. 342). The only inaccuracy relating to petitioners' income tax returns resulted in an overstatement of petitioners' income in that they failed to claim depreciation with respect to certain items of hotel equipment and fixtures purchased between March 19, 1948, and May 12, 1948. The fact of the purchases, however, was reflected in petitioners' checks (R. 158, 160-161).

The Government's case was based entirely upon net worth computations. The Government fixed the petitioners' opening net worth on the first day of January, 1946 at $19,152.59, consisting of bank account balances in the

amount of $2,152.09, corporate stock having a cost basis of $29,650, less certain liabilities (R. 181). Based on record purchases and expenditures and starting with the figure of $19,152.59, the Government purported to show an increased net worth for the year 1946 in the amount of $54,863.09; for the year 1947 in the amount of $29,516.17; and for the year 1948, the year now involved, in the amount of $28,743.62 (R. 180-185). The indictment relating to the year 1948 charged the petitioners with understating their income for that year by approximately $18,000, resulting in an asserted unpaid tax liability of $7,518.88 (R. 342). No evidence was introduced identifying the source of the asserted increase in net worth. No evidence was introduced to prove that the asserted increase in net worth was attributable to taxable income. No evidence was introduced refuting the possibility that the asserted increase in net worth was attributable to specific non-taxable sources such as gifts, inheritance, etc.

The petitioners did not take the stand on their own behalf. They did, however, give to the Government investigator during the course of the investigation certain sworn statements in which they fixed their net worth on January 1, 1946, as $156,000 or $157,000 (R. 71-72), consisting of $104,000 in cash accumulated prior to December 22, 1933 (R. 71-72, 82, 303); $9,000 in cash accumulated subsequently from salaries (R. 71), and the balance in corporate stock (R. 71). The Government sought to meet its burden of proof by introducing evidence as to certain visible assets and liabilities on January 1, 1946, by introducing evidence of subsequent expenditures and purchases, by introducing the sworn statements above referred to, and by introducing circumstantial evidence relating to the petitioners' financial history and tending, according to the Government's theory, to show that the petitioners were in fact not affluent during the years prior to the taxable period and could not have accumulated a cash fund (R. 343-347).

In computing the petitioners' opening net worth on January 1, 1946, the Government included no part of the

$113,000 cash fund claimed by the petitioners to have existed at that time in their extra-judicial statements (R. 180-181). The only corporate stock included in the net worth of petitioners on January 1, 1946, was that stock the subsequent sale of which was reflected in petitioners' income tax return (R. 180-181, 347). No attempt was made to ascertain the separate net worth of the petitioner Ethel E. Holland on January 1, 1946.

The Government's special agent who conducted the investigation stated that the petitioner Marion L. Holland had told him that part of the cash fund which he had accumulated consisted of money obtained when he turned in about $10,000 to $20,000 in gold to various banks pursuant to the President's call. According to the Government's special agent the petitioner identified the banks by name, among which was the Colorado National Bank. The special agent stated that he did not inquire at any of these to determine whether or not gold was in fact turned in for cash by the petitioners (R. 86-87). The petitioner had further indicated to the special agent during his investigation that a large part of the cash accumulated was a result of real estate transactions in the 1920's when he was buying and selling real estate at a profit in Denver County (R. 93-94). The Government's special agent testified that he personally did not check into the records of the County Clerk and Recorder of Denver County to determine which properties were bought and sold by Mr. Holland (R. 94), and that he did not know whether anyone else had made such a check. The petitioner further had told the Government's special agent that approximately $15,000 in cash was accumulated as a result of certain restaurant sales. The special agent testified that he had made no check of the records to determine the number of sales or the selling price (R. 99).

With respect to the currency, no part of which was included by the Government in its opening net worth statement, the Government's special agent testified as follows (R. 85):

"The only question of cooperation which I have in mind was whether they always told us the truth about their currency, or not."

With respect to petitioners' security transactions, Mr. Glenn W. Davis, Cashier of the United States National Bank of Denver, testified for the Government that his bank made loans to Mr. Holland from 1942 to 1946 (R. 25); that these loans were secured by a pledge of corporate stocks (R. 26), and that at the end of the year 1945, the outstanding balance on the loans was secured by the following corporate securities (R. 26-30):

Date of Pledge	Shares Pledged	Corporation	Record
1- 3-42	300	Southern Pacific Company	26
5-27-42	200	Midland Steel	27
5-27-42	200	Curtis Publishing Company	27
5-27-42	100	Nash-Kelvinator	27
5-27-42	100	Commercial Credit	27
7- 3-42	100	Columbia Broadcasting Company	27
12-29-42	100	Midland Steel	27
1-25-43	100	20th Century Fox	27
7-27-43	100	Midland Steel	27
7-27-43	100	20th Century Fox	27
1- 6-44	400	20th Century Fox	27
3- 6-44	100	20th Century Fox	28
9- 5-44	500	United Gas	28
9- 5-44	1000	Commonwealth & Southern	28
10-13-44	50	United Gas	28
10-28-44	100	Certainty Products	28
11- 8-44	600	Certainty Products	28
5- 7-45	200	20th Century Fox	28
5- 1-45	100	Sinclair Oil	28
12-14-45	100	Sinclair Oil	28

Mr. Elmer C. Penny, Vice-President of the Wyoming National Bank at Casper, Wyoming (R. 140-144), a Government witness, testified that his bank had made a loan to Mr. Holland, in the name of "Francis M. Monroe" on July 18, 1938, in the sum of $1,450.00 (R. 141); that the loan was secured by 200 shares of Paramount Pictures Corporation stock and 100 shares of New York Central Railroad stock (R. 141); that the loan was paid July 29, 1938 (R. 141); that a second loan was made September 6, 1938, in the sum of $1,070.92 (R. 141-142), and that this loan was secured

by 100 shares of New York Central Railroad stock (R. 141) and 100 shares of Southern Pacific Railroad stock (R. 142), and was paid September 15, 1938 (R. 142).

Mr. Robert B. Bryans, Vice-President of the Casper National Bank (R. 130-132), a Government witness, testified that his bank had made eight loans (R. 131) to Mr. Holland from September 1937 to April 1938 ranging from $200 to $2,194.38 (R. 131). All these loans were secured by stock as follows (R. 131-132):

Date of Pledge	Shares Pledged	Corporation	Record
9-15-37	50	20th Century Fox	131-132
3- 7-38	100	Warner Bros.	131-132
3- 7-38	100	Warner Bros.	121-132
9-27-38	100	North Central Railway	131-132
10-15-38	100	Western Union	131-132
12-30-38	50	Holly Sugar	131-132
12-30-38	300	Nash-Kelvinator	131-132

Mr. George C. Bodley, the special agent of the Bureau of Internal Revenue, testified as follows (R. 95, 96):

> "Q. So that before January 1, 1946 he had bought and sold at a profit many shares of the corporate stock, is that right?
>
> A. Yes, he did. His greater purchases were still on hand in 1946. He held stock then."

The only proof in the record of the actual sale of any portion of the corporate stock owned by petitioners is reflected in Schedule "D" (R. 239) attached to the income tax return of Mr. Holland for the year 1946. It is there indicated that on February 2, 1946, blocks of 20th Century Fox Film stock and blocks of Midland Steel Products Company stock were sold for a total of $52,151.78. Schedule "D" does not recite the number of shares sold. In his extra-judicial statement petitioner Marion L. Holland asserted that he did not know whether or not he had sold all of his securities on or before the date he purchased the hotel in April, 1946 (R. 302).

With respect to the failure of the Government to account for all of the stock which its witnesses had indicated was

in existence on or at some time before January 1, 1946, the Court of Appeals stated as follows (R. 346):

> "... Subsequent returns for the period in question did not reflect the sale of any stock. If, therefore, any stocks remained unsold in 1946, they must be assumed to have remained in his custody and could therefore have no bearing on his net worth as established by purchases and expenditures."

The Government's case against petitioner Ethel E. Holland was based solely on the theory that any unreported income must have been the result of an understatement of gross receipts; that the petitioner Ethel E. Holland prepared the daily sheets showing the gross receipts and turned them over to the bookkeeper; and that, therefore, the evidence was sufficient for the jury to conclude that Mrs. Holland had violated the statute, notwithstanding the failure of the Government to demonstrate a single discrepancy in any daily report prepared by Mrs. Holland (R. 193, 198).

SUMMARY OF ARGUMENT

1. The Government's case rested "solely on the circumstances of increased net worth" (R. 342). The petitioners' books and records were complete and were made available to the Government agents during their investigation and to the court during the trial. There was no evidence of any specific item of unreported income, of any improper deduction, of any undisclosed source of income, or of any error in the petitioners' books which would have resulted in the understatement of taxable income. The use of the net worth method was a departure from the method of computing income utilized by the petitioners. Section 41 of the Internal Revenue Code expressly limits the authority of the Government to deviate from the method of accounting selected by a taxpayer to situations where he does not keep books and records in accordance with a regular method of accounting, or where the method employed does not clearly reflect taxable income. The lower courts have almost uni-

formly taken the position that criminal prosecutions under Section 145 (b) are subject to the provisions of Section 41 of the Internal Revenue Code so that resort to the net worth method of computing income must be limited to situations where the taxpayer's books and records are inadequate. Since Section 145 (b) sets up no standard for computing the "tax imposed", and taxable income varies with the method of accounting used, reference must be made to the other provisions of the Internal Revenue Code, including Section 41, relating to the computation of the tax generally. Moreover, it would be unreasonable if the limitations relating to the use of net worth in civil cases were non-existent or less stringent in criminal prosecutions. The Government's contention that the net worth method is a method of proving understatement of income, rather than a method of accounting, is a play on words. Any method of accounting is a technique for proving or establishing income; the net worth method is distinguishable only because of its inherent crudeness. In the light of the requirements of Section 41 and the fact that the Government's case was predicated solely on net worth computations, the petitioners' motions for judgments of acquittal should have been granted.

2. In order for a net worth computation to be worthy of probative value it is necessary, first, to establish accurately the net worth starting and ending points together with any non-deductible expenditures not otherwise reflected in newly-acquired assets. If the total represented by the increase in net worth, plus other non-deductible expenditures, is in excess of the taxable income reported and if, but only if, this total is attributable to taxable income, then it reasonably follows that the taxpayer has understated his taxable income. The burden of proving whether or not increases in net worth are attributable to currently taxable sources cannot be shifted to the taxpayer by characterizing it as the burden of explanation. There is no logical justification for assuming or creating the presumption that

every asserted increase in net worth is attributable to current taxable income. If the Government's position were accepted, it would shift to the taxpayer the burden of proving the negative of the most critical element of its case—the attempted evasion of a "tax imposed".

3. The Government failed to sustain its burden of proving the net worth starting point. Moreover, its investigation was defective. Even if the petitioners' extra-judicial declarations were competent the affirmative deficiencies in the net worth starting point were of such a character as to deprive it of probative value. The Government omitted a critical item of currency despite the fact that its own witness, the special agent, expressed doubt as to the existence or non-existence of this item. The Government omitted hundreds and possibly thousands of shares of stock which its own witness showed were in existence on or prior to the net worth starting point date and which were neither reflected in the net worth computations or otherwise accounted for.

4. The extra-judicial declarations made by petitioners to Government agents were neither competent as evidence nor sufficient as proof. The declarations were not properly corroborated. The rule requiring corroboration applies not only to outright confessions but to all declarations or admissions whether inculpatory or exculpatory. Without the declarations, the Government's proof on the net worth starting point would be deprived of even the small meaning it might otherwise have had.

5. Assuming that the Government had proven the net worth starting point with sufficient accuracy, it completely failed to prove an understatement of taxable income. There was no proof of any specific unreported item of income, any improper deduction, or of any undisclosed source of income. There was no proof of the sources of the asserted increases in net worth. There was not even any evidence introduced to refute the possibility that the increases were

attributable to specific non taxable sources such as gifts or inheritance. The jury was improperly allowed to assume that increases in net worth were attributable to currently taxable income.

6. Even assuming that the Government succeeded in proving an understatement of taxable income, there was not one item of evidence on the element of willfulness. While it may be proven by either circumstantial or direct evidence, willfulness cannot be presumed or inferred from a mere understatement of income. There must be specific independent evidence, such as the keeping of a double set of books, the making of false entries, the destruction of books or records, the concealment of assets or some similar form of conduct to justify a conviction under Section 145 (b). No such evidence existed here. A pure net worth case will never justify submission to the jury for this reason alone.

7. The trial court's rulings on the granting and denial of instructions were either erroneous or misleading. It refused to instruct the jury on the basic requirements of a net worth prosecution. It refused to instruct the jury on the quality and nature of circumstantial evidence. It refused to instruct the jury on the statutory basis of the offense charged. It improperly limited the Government's burden of proof and shifted the burden to the petitioners. Its instruction on reasonable doubt was erroneous.

ARGUMENT

I.

RESORT TO THE NET WORTH METHOD OF COMPUTATION WAS NOT PERMISSIBLE; AND SINCE THE GOVERNMENT'S CASE RESTED SOLELY ON THE CIRCUMSTANCES OF INCREASED NET WORTH, PETITIONERS' MOTIONS FOR JUDGMENTS OF ACQUITTAL SHOULD HAVE BEEN GRANTED

The nature of the present case, and particularly the evidence upon which the prosecution was based, was accurately described by the Court of Appeals as follows (R. 342):

> "The returns for each of the prosecution years were prepared by a tax accountant from books and records kept by him from information furnished by appellants. There is no contention that the returns do not accurately reflect all of the income shown on the books and records maintained by the taxpayers in the course of their business as owners of a hotel and restaurant in Golden, Colorado. There is no direct proof of any specific unreported item of income or undisclosed sources of income, or that any items of expense claimed as deductions were not legitimate and allowable. The government's case rests solely on the circumstances of increased net worth established by record purchases and expenditures during the prosecution period to prove a substantial understatement of taxable income for those years."

The record affirmatively demonstrated that all of the permanent books and records of the petitioners were in existence and were made available to the Government during its investigation and to the court during the trial (R. 88, 89, 153, 159, 161). In addition to these permanent records the petitioners made available the daily reports for the entire period covered by the indictments showing the daily receipts and disbursements, both in cash and by check. Attached to each daily report were cash "paid out" slips for each item for which cash was paid (R. 159-161). The petitioners' checks were also made available (R. 159-161). The petitioners further offered the Government investigators the opportunity of standing by the cash registers and checking the gross receipts in order to determine whether or not those receipts approximated those shown during the period covered by the indictment (R. 89). Not a single error or discrepancy was found or proven of a character which would have resulted in the understatement of taxable income. There was no evidence of any specific item of unreported income, of any improper deduction or of any undisclosed source of income (R. 342). The Government's case was, as the appellate court stated, predicated "solely on the circumstances of increased net worth" (R. 342).

This being so, it was incumbent upon the trial court to grant the petitioners' motions for judgments of acquittal.

No specific statutory basis exists for the use of the so-called net worth expenditures method of computing income. Section 41 of the Internal Revenue Code expressly limits the authority of the Government to deviate from the method of accounting selected by the taxpayer to situations where the taxpayer does not keep books and records in accordance with a regular method of accounting, or where the method employed does not clearly reflect taxable income. The lower courts appear to be almost uniform in either holding expressly or assuming that resort to the net worth method of computing income in civil and criminal cases is inappropriate absent independent evidence that the taxpayer's books and records are inadequate or substantially inaccurate.

Moreover it is impossible to apply Section 145(b) without reference to those other provisions of the Code, including Section 41, which relate to the computation of the taxpayer's income and tax. Section 145(b) makes unlawful a wiilful attempt to evade and defeat "any tax imposed by this Chapter" but it sets forth no method for determining the "tax imposed". Furthermore, the taxing statutes do not purport to establish a concept of invariable taxable income but rather are premised on the fact that the amount of the tax will vary with the accounting method utilized to establish the taxpayer's income. It follows therefore that reference must be had to those other sections of the Code pertaining to computation of tax in order to determine whether the taxpayer's income as reported was in fact understated. In any event, it would be extraordinary if the limitations imposed under Section 41 for the purpose of computing civil liability were non-existent or less stringent in the case of criminal prosecutions.[1]

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[1] The danger can be illustrated simply. The Government would undoubtedly concede that taxable income may vary substantially according to the method of accounting used, despite the fact that

That prosecutions under Section 145 (b) are subject to the limitations of Section 41 of the Internal Revenue Code so that inadequacy or inaccuracy of the taxpayer's books and records is prerequisite to use of the net worth method finds consistent support in the language of the Courts of Appeals. Thus the Court of Appeals for the Ninth Circuit, in *Remmer* v. *United States*, 205 F. 2d 277, 286, judgment vacated and case remanded for hearing without considering the point, 347 U.S. 227, stated expressly that—

> "The net worth method of computing income may be used only where a taxpayer does not keep books or such books are inadequate in that they do not clearly reflect income."

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there have been no improper omissions of income or improper deductions. Therefore, if resort to net worth computations is permitted where there is no evidence whatsoever of fraud and of the taxpayer's failure to reflect any specific items of income in his books and records, a substantial understatement of income may be proved in a criminal prosecution and yet be solely attributable to the variance in method used in computing or proving income. Thus one of the critical elements of proof, may be established solely by resort to the net worth method, rather than the method of accounting utilized by the taxpayer. The danger is magnified when the requirements of proof as to the other elements are considered. In construing Section 145(b) it is commonly recognized that the Government need not prove the exact amount of tax evaded and that, under ordinary circumstances, an additional tax follows as a matter of law from an understatement of taxable income. *United States* v. *Johnson*, 319 U. S. 503, 517; *United States* v. *Rosenblum*, 176 F. 2d 321 (CA 7); *United States* v. *Schenck*, 126 F. 2d 702 (CA 2); *Gleckman* v. *United States*, 80 F. 2d 394 (CA 8). With respect to the question of willful intent, where, as here, the Government's case is predicated "solely on the circumstances of increased net worth" (R. 342), if the case is submitted to a jury the intent will have to be inferred from the understatement of income, notwithstanding that as a matter of law such inference is not permissible. *Spies* v. *United States*, 317 U. S. 492; *United States* v. *Murdock*, 290 U. S. 389; *Wardlaw* v. *United States*, 203 F. 2d 884 (CA 5); *United States* v. *Martell*, 199 F. 2d 670 (CA 3); *Lurding* v. *United States*, 194 F. 2d 419 (CA 6); *Stinnett* v. *United States*, 173 F. 2d 129 (CA 5); *Haigler* v. *United States*, 172 F. 2d 986 (CA 10); *Jones* v. *United States*, 164 F. 2d 398 (CA 5); *Malone* v. *United States*, 94 F. 2d 281 (CA 7); *Hargrove* v. *United States*, 67 F. 2d 820 (CA 5); *United States* v. *Wilbur L. Clark* (S. D. Cal., August 4, 1954), not yet reported.

See also *Olender* v. *United States*, 210 F. 2d 795, 798 (CA 9). The Court of Appeals for the Fifth Circuit has consistently taken the same position. Thus, in *Sasser* v. *United States*, 208 F. 2d 535, 537, it stated:

> ". . . The net worth method of reconstructing taxable income *in cases where the taxpayer has no records from which his actual income may be computed* is a hybrid method of determining income based upon the cost of assets owned by the taxpayer at the beginning and at the end of each taxable period." (Emphasis added.)

See also *Bryan* v. *Commissioner of Internal Revenue*, 209 F. 2d 822, 826, 827 (CA 5). The Court of Appeals for the Third Circuit is also of the opinion that resort to net worth computations is subject to the limitations of Section 41. In *United States* v. *Williams*, 208 F. 2d 437, 437-438, the Court stated:

> "The government's case was based upon a comparison between the net worth of the taxpayer at the beginning and at the end of the two taxable periods above mentioned. *The defendant contends that his is not a proper case for the application of the net worth formula for proving tax evasion. In this he is wrong. The statute* [I.R.C. § 41] *provides that if the taxpayer has no regular method of accounting 'the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income.'* This taxpayer by his own admission kept no regular books at all. He did have receipts for some items claimed as deductions. He said that his business was that of leasing real estate. But there was one good-sized item which he admitted receiving from a gambling establishment for which he accounted only by saying it was included in what he returned as rental from the property in which the establishment was located. There were other items which he said were not income." (Emphasis added.)

To the same effect are the decisions of the Court of Appeals for the Fourth Circuit. See *Dawley* v. *United States*, 186

F. 2d 978, 980, and *Bell* v. *United States*, 185 F. 2d 302, 308, certiorari denied 340 U. S. 930, where the Court stated:

> "... An estimate of the taxpayer's net worth as the means of determining his income *is resorted to in the absence of accurate records* which it is his duty under the statute to make and to preserve, ..." (Emphasis added.)

The Court of Appeals for the Sixth Circuit has indicated a similar understanding of the law in *Gariepy* v. *United States*, 189 F. 2d 459, 461, where it stated:

> "... *When investigation was begun by agents of the Treasury, they were unable to find adequate records disclosing receipts of income by the appellant. The investigators then undertook to establish his income by the so-called 'net worth' method.* This involved fixing a base from which increases in the taxpayer's assets could be estimated by examination of bank accounts, real estate records, showing investments, the books of stockbrokers indicating purchase of securities, and so on. This method of determining the liability of a taxpayer (either civil or criminal) is an established practice of the government and has received the sanction of courts in many cases. *It is now too late for a taxpayer who fails to keep or preserve records to complain.*" (Emphasis added.)

It is interesting to note that in *Friedberg* v. *United States*, 207 F. 2d 777 (CA 6), certiorari granted, 347 U. S. 1006, the trial court instructed the jury as follows:

> "In this case the government is trying to establish an additional tax owing by a method known as the net worth method, which method is authorized where the bookkeeping methods of the defendant to not clearly reflect the income of the defendant. *If you find that the taxpayer's bookkeeping methods do clearly reflect his income, then the government has no right to use the so called net worth method and your verdict must be for the defendant in this case as to all counts of the indictment.*"[2] (Emphasis added.)

[2] Pages 1138-1139 of the Record in *Friedberg* v. *United States*.

A most forceful expression of the view which the petitioners now urge upon this Court was set forth by District Judge Hutcheson in granting the defendant's motion for a judgment of acquittal on April 22, 1954, in *United States* v. *Riganto*, 121 F. Supp. 158, 161, 162 (E. D. Va.):

> "*. . . I have heretofore ruled, and I adhere to that ruling, that the burden is upon the Government to show, before resorting to another method, the inadequacy of the books and records employed by the taxpayer. The Government must also show that the net worth method, the bank deposits method, or whatever other method is adopted, does reasonably reflect the income of the taxpayer. In meeting that burden, the Government must introduce evidence, other than its own computations, to discredit the books and records of the taxpayer, such as proof of unrecorded transactions, or internal evidence within the books themselves showing incompleteness or inaccuracy.* (Emphasis added.)
>
> • • •
>
> "Unless the Government proves the necessity for exercising a discretion in resorting to such method and then submits sufficient proof to show that the method reasonably and accurately reflects the income of the taxpayer, the duty is upon the Court to grant a motion for udgment of acquittal and I shall do so in this case."

The position taken by the petitioners here appears to have been adopted by the Tax Court which, in *Glackman* v. *Commissioner*, 10 T. C. M. 1132, 1951, after citing cases holding that there may be resort to net worth method where the taxpayer fails to produce adequate records, made the following statement:

> "This case, however, differs from those cases and others in which the increase in the use of net worth has been sustained. In this case, the petitioner's principal source of income was from sales at his barroom. As to those sales, he had records and the respondent did not find error in them in determining the deficiency, nor through any evidence at the trial, although there was considerable examination of witnesses as to the accuracy of the records."

See, also, *Thomas A. Talley*, v. *Commissioner*, Tax Court Docket Nos. 33,140 and 33,141, June 30, 1953, 20 T. C. No. 101, where the Tax Court said:

> "The limitations of the increase in net worth method are well known. Often it results in an inaccurate statement of income or the placing of income in the wrong year and, at best, it yields only an approximation. . . .
>
> "The ordinary method of computing taxable income in accordance with the general pattern of the code is to subtract allowable deductions from a taxpayer's gross income. The increase in net worth method is, of course, not in accord with this statutory pattern and is permitted by virtue of Section 41, I. R. C., only in unusual circumstances, none of which is present here."

The Government's position in respect to the present contention is that Section 41 has no application to the proof of a criminal tax evasion case, the net worth method being not a method of accounting but of "proving . . . that there is a substantial understatement in the taxpayer's reported income and tax." (Brief for the United States in *Remmer* v. *United States*, p. 49). This argument will not withstand analysis. Calling net worth a method of proof rather than a method of accounting is simply playing with words. Every method of accounting is a method of proving or establishing the taxpayer's income for the purpose of computing the tax due. The net worth method is utilized for precisely this purpose. If what the Government means is that the more conventional methods of accounting are more accurate and precise than the net worth method, then the petitioners will agree. Indeed the only distinction of the net worth method is its inherent crudeness.

The Government itself has gone far toward conceding the correctness of petitioners' position when in its petition for certiorari in *Calderon* v. *United States*, 207 F. 2d 377 (CA 9), certiorari granted 347 U. S. 1008, it made the following statement (p. 6):

> "As this Court stated in *United States* v. *Johnson*, 319 U. S. 503, 517, in tax evasion cases *where the de-*

> *fendant has engaged in multitudinous financial transactions of which he kept no adequate records*, it is not to be expected that understatement of income can be shown by direct proof of the individual income-producing transactions. *In such cases the customary method of proof consists in showing an increase in the defendant's net worth* during the year substantially in excess of his reported income plus non-income receipts like gifts and bequests."[2] (Emphasis added.)

In this light, the Government is hardly in position to contend that resort to net worth computations as the sole evidence to support a tax evasion prosecution can be justified in situations where the taxpayer's books and records are complete and concededly do not contain a single error which would result in the understatement of taxable income.[4]

II.

SINCE THE GOVERNMENT FAILED TO ESTABLISH A PRIMA FACIE CASE, PETITIONERS' MOTIONS FOR JUDGMENTS OF ACQUITTAL SHOULD HAVE BEEN GRANTED.

A. Burden of Proof—General Principles.

Before proceeding to test the sufficiency of the Government's case, on the assumption that resort to net worth was appropriate, it may be helpful to analyze the theory and application of the net worth method in terms of the applicable principles of law, particularly those relating to the burden of proof. The net worth technique is designed to establish that the taxpayer's acquisitions and expendi-

[2] It is the petitioners' position that net worth computations have been approved by this Court for "reinforcement" purposes only. *United States* v. *Johnson*, 319 U. S. 503.

[4] In the brief in opposition to the petition in this case the Government correctly stated that the precise point here raised (Heading No. I) had not been raised before the lower courts (Brief in Opposition, p. 13). The petitioners, however, did move for a judgment of acquittal on the ground of insufficiency of evidence (R. 170-171). Assuming the correctness of the petitioners' contention, there was no evidence whatsoever to properly submit to the jury in proof of a violation of Section 145 (b). This being so, it would be difficult to conceive of an error more plain and substantial or more likely to result in a miscarriage of justice.

tures during the taxable period exceed the income reported and that such acquisitions and expenditures are attributable to currently taxable income. If the circumstances relating to the net worth computations prove any less, no inference of understatement of taxable income can be drawn. In order for a net worth computation to be worthy of probative value it is necessary, first, to establish accurately the net worth starting and ending points together with any non-deductible expenditures not otherwise reflected in newly-acquired assets. If the total represented by the increase in net worth, plus other non-deductible expenditures, is in excess of the taxable income reported and if, but only if, this total is attributable to income which is currently taxable, then it would follow that the taxpayer has understated his taxable income. Unless the net worth starting point is accurately established, a net worth computation will have no probative value for there will be no way of determining that expenditures and acquisitions made during the taxable period were not attributable to assets or funds acquired prior to the net worth staring point. On the other hand, even if the net worth starting point is definitely established so that expenditures and acquisitions during the taxable period can be assumed to have been made out of current sources, the computation will be insufficient to prove an understatement of taxable income unless the sources represent currently taxable income.

The peril involved in relying upon net worth computations as the sole proof in a tax evasion prosecution is substantially magnified by the manner in which they are applied. The Government commonly assumes the non-existence of all assets except those which are visible to its investigators. Non-visible assets such as currency are eliminated unless the taxpayer assumes the burden of establishing their existence. Having predicated a starting point upon assumption, the Government then assumes that increases over the net worth at the starting point are attributable to taxable income. This assumption is often made without even an attempt to identify the source of the funds utilized by the taxpayer. The taxpayer is thus

forced to prove that the acquisitions and expenditures are attributable to non-taxable sources or to sources which are not taxable during the year in question. Accordingly, the burden is shifted to the taxpayer to prove that he did not in fact understate his taxable income, thereby evading or avoiding a "tax imposed".

The lower courts are in general agreement that, unless the starting point is accurately established, net worth computations are entirely lacking in probative value.[5] As stated by the Court of Appeals for the Seventh Circuit in *United States* v. *Fenwick*, 177 F. 2d 488, 492 (CA 7):

> "Remembering that the government has the burden of proof in a criminal case, that the burden never shifts to defendant, that circumstantial evidence must be of such character as to exclude every reasonable hypothesis except that of guilt, it necessarily follows that, when the government relies upon circumstances of increased net worth and expenditures in excess of reported income to establish income tax evasion, the basic net worth must be established. The defendant is not compelled to take the witness stand; he is not compelled to make proof that he is innocent, but he must be proved guilty by the evidence beyond all reasonable doubt, and where there is uncertainty as to whether all the assets of defendant are included in the government's computation of net worth, it follows that its computations can not be relied on. Essential proof of no other assets is the cornerstone of the evidence of the government; that cornerstone being faulty, the whole edifice is so weakened as to be undependable as proof of guilt beyond all reasonable doubt."

See also, to the same effect, *Olender* v. *United States*, 210 F. 2d 795 (CA 9);[6] *Ford* v. *United States*, 210 F. 2d

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[5] In the present case, however, the trial court erroneously refused to instruct that the Government must prove the net worth starting point with accuracy. See discussion under Heading No. III, *infra*.

[6] In *United States* v. *Riganto*, 121 F. Supp. 158 (E. D. Va.), Judge Hutcheson made the following comments:

> ". . . In the last few years I have observed with interest a change that has taken place in the nature of proof offered to

313 (CA 5); *Calderon* v. *United States*, 207 F. 2d 377 (CA 9), certiorari granted 317 U. S. 1008; *United States* v. *Venuto*, 182 F. 2d 519 (CA 3); *Bryan* v. *United States*, 175 F. 2d 223 (CA 5), affirmed without considering the point 338 U. S. 552.

While the principle that the net worth starting point must be definitely established has been almost uniformly accepted, a few lower courts have concurred in the Government's position that increases in net worth must be assumed to be attributable to currently taxable income, unless the taxpayer demonstrates the contrary. However, the assumption has almost always been made in cases where the net worth computations were used to corroborate specific evidence of understatement of taxable income, or,

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support the charge of the prosecution in many of these cases charging tax fraud. This change has caused me some concern by what appears to be a preference to introduce proof to show understatement of income and fraudulent intent by methods other than by direct evidence. Of course, it is necessary in some cases that the Government proceed by indirect methods. This evidence consists of proof undertaking to show income of the taxpayer computed upon what is referred to as the net worth increase or bank deposits and expenditures methods or a combination of both. The latter is employed here. Basing my observation upon a number of cases during the past few years, it would seem that the use of one or both of these methods has been employed through preference at times when direct evidence is available.

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"It may sound plausible to contend that the taxpayer knows better than the Government the assets owned at a particular time and the amount of his income for a given period, but this is to ignore the important rule of law concerning the burden of proof.

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". . . It is evident from the testimony in this case there was not a proper starting point insofar as the bank deposits and expenditures method is concerned. If, in such circumstances, the case should be submitted to the jury and they should, by possible chance, arrive at a verdict of guilty, they could do so only upon conjecture, theory or speculation. When such circumstances exist, it is the duty of the trial court, when an issue of this kind is made up by motion, to sustain the motion."

at the minimum, in cases where an undisclosed source of taxable income was discovered[7] See, for example, *United States* v. *Johnson*, 319 U. S. 503; *Smith* v. *United States*, 210 F. 2d 496 (CA 1), certiorari granted 347 U. S. 1010; *Mitchell* v. *United States*, 208 F. 2d 854 (CA 8); *Davena* v. *United States*, 198 F. 2d 230 (CA 9); *Gendelman* v. *United States*, 191 F. 2d 993 (CA 9); *Bell* v. *United States*, 185 F. 2d 302 (CA 4), certiorari denied 340 U. S. 930; *United States* v. *Vassallo*, 181 F. 2d 1006 (CA 3); *Lurding* v. *United States*, 179 F. 2d 419 (C.A. 6); *United States* v. *Hornstein*, 176 F. 2d 217 (CA 7); *Schuermann* v. *United States*, 174 F. 2d 397 (CA 8), certiorari denied 338 U. S. 831; *United States* v. *Potson*, 171 F. 2d 435 (CA 7); *United States* v. *Skidmore*, 123 F. 2d 604 (CA 7), certiorari denied 315 U. S. 800; *Malone* v. *United States*, 94 F. 2d 281 (CA 7); *Gleckman* v. *United States*, 80 F. 2d 394 (CA 8). The unwarranted nature of the assumption and its irreconcil-

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[7] The position taken by the Government in its brief (p. 31) presented to the Courts of Appeals for the First Circuit in *Smith* v. *United States*, 210 F. 2d 496, is most revealing in respect to this question:

> ". . . This inference, [of understatement of income] in turn, may be drawn by a jury only if two conditions obtain: (1) that there is evidence of a *possible source* (Emphasis added) of income to account for the expenditure or increases in net worth, which evidence serves to *eliminate the possibility* (Emphasis added) that the expenditures or increases in net worth were attributable to non-taxable sources, such as gifts or inheritances; and (2) that there is a fixed starting *point*, that is, a date coinciding with the beginning of the first prosecution year at which time the taxpayer's net worth can be affirmatively established with some definiteness, which, in turn, serves to foreclose the hypothesis that the expenditures or net worth increases derived from prior accumulated funds."

It is the petitioners' position that even under the standards set forth as requisites for the inference in the Government's brief in the *Smith* case, *supra*, no basis for the inference existed in this case; although petitioners do consider novel the Government's statement that evidence of a possible source of income to account for increases in net worth serves to eliminate the possibility that the expenditures or increases in net worth are attributable to non-taxable sources.

ability with established principles of burden of proof in criminal cases has been the subject of recent judicial notice and criticism. Thus the Court of Appeals for the Third Circuit, in *United States* v. *Caserta*, 199 F. 2d 905, 907, recently observed:

> ". . . Of course it is necessary, so far as possible to negative nontaxable receipts by the taxpayer during the period in question. The cases show, however, a rather surprising rule that when the discrepancy between increased net worth and reported income is shown, the burden of explanation shifts to the taxpayer, at the same time repeating the usual criminal law rule that the burden throughout a criminal case is upon the prosecution. We do not, however, get into this particular ramification in the case under discussion, for the prosecutor offered proof negativing receipts for nontaxable sources such as gifts, inheritance and so on."

Similar notice of this departure from the established rule of proof was taken in *Demetree* v. *United States*, 207 F. 2d 892, 894 (CA 5), where the Court of Appeals stated:

> ". . . Further and more prejudicial to a defendant, there has grown up a kind of ancillary theory that the government, by introducing proof of deposits, expenditures, etc., having put up what it calls a *prima facie* case, the defendant finds himself jockeyed out of the position the law affords him, of insisting that the government establish his guilt by legal and credible evidence beyond a reasonable doubt. This is accomplished by requiring him to prove himself innocent by assuming the burden of overcoming the prejudicial effect of the mass of exhibits, estimates, conjectures, and conclusions which the government has been allowed to get into the record, upon the apparent theory that it is up to the defendant to explain all of it away as part of his burden to prove his innocence."

The correct rule to be applied in net worth cases was stated by the Court of Appeals for the Ninth Circuit, in *Olender* v. *United States*, 210 F. 2d 795, 807:

"... This method of proof requires the government to show the net worth of the taxpayer as of the beginning and the end of the taxable year and the non-deductible expenditures made by him that year. *If the increase in his net worth plus his non-deductible expenditures exceed his reported income for the year, and such excess is not attributable to gifts, devises, loans or other non-taxable receipts, then the conclusion may be drawn that the taxpayer* realized income which he failed to report. . . .

* * *

"... In these net worth-expenditures cases, based as they are upon an elaborate scheme of circumstantial evidence, *it is particularly important to keep the jury's attention riveted upon the ultimate question whether the government has sustained its burden of proving the crime charged beyond a reasonable doubt.* See Demetree v. United States, 5 Cir., 207 F. 2d 892; Lurding v. United States, 6 Cir., 179 F. 2d 419, 422." (Emphasis added.)

To the same effect is the forceful statement of the Court of Appeals for the Fifth Circuit, in *Ford* v. *United States*, 210 F. 2d 313, 315:

"... One of the most difficult matters of proof in such cases is to establish a satisfactory starting point at the beginning of the first of the tax periods included in the indictment, that is as applied to the present case, to negative the existence on January 1, 1945, of resources available to the defendant and his wife from which the excessive expenditures might have come. *The Government then has the further burden in such cases of proving that there were no gifts, devises, or other nontaxable income which could have been used for the expenditures, and of proving large cash expenditures within each of the tax years considerably exceeding the taxpayer's accumulated cash resources plus reported income and which expenditures could not be otherwise accounted for than by finding that the taxpayer had received more taxable income than had been reported, and had willfully and knowingly filed or caused to be filed a false and fraudulent income tax return.*" (Emphasis added.)

Two very recent decisions sustaining tax evasion convictions over defendants' objections that the Government had failed to carry the burden of proof give vigorous support to the proposition that at the very minimum the Government must establish unreported income. Thus, in *United States* v. *Stayback*, 212 F. 2d 313, 317, petition for certiorari filed May 21, 1954, No. 781, the Court of Appeals for the Third Circuit stated:

> "It is well settled that once the government *establishes unreported income* (Emphasis added) of the defendant and allows deductions claimed by him in his tax return and others that it can calculate without his assistance, the burden is on the defendant to prove that he had other allowable deductions which were not shown in his return: United States v. Smith, 3 Cir., 1953, 206 F. 2d 905; United States v. Link, 3 Cir., 1953, 202 F. 2d 592; United States v. Hornstein, 7 Cir., 1949, 176 F. 2d 217. The government is not required to prove the negative, *i.e.*, that the defendant did *not* have any other deductions. Gariepy v. United States, 6 Cir., 1951, 189 F. 2d 459."

Again, in *United States* v. *Smith*, 206 F. 2d 905, 911 (CA 3), the same court stated:

> ". . . *We think it part of the Government's prima facie case to establish, at least, that what it charges against defendant is income for the year involved.* It has not established its *prima facie* case by showing that defendant has some money and then asking the jury to infer that that money is 'income' for the year involved." (Emphasis added.)

The convenient substitution of assumption for proof in net worth criminal cases has been justified by the Government and some courts on the theory, set forth in *Rossi* v. *United States*, 289 U. S. 89, 91-92, that "it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which if untrue could readily be disproved by the production of documents or

other evidence probably within the defendant's possession or control." Scrutiny of the *Rossi* case, however, demonstrates its inapplicability to cases of this kind. In *Rossi, supra*, p. 91, this Court held that since "It was impossible . . . lawfully to register the still or to give the required bond . . . proof of the custody or control of a still for unlawful distillation of alcoholic spirits is enough to give rise to an inference of lack of registration and failure to give bond which the defendant must overcome by proof." The Government was thus not required to prove that the defendants did not do something which, as a matter of law, they could not have done. But here there is no logical justification for shifting the Government's burden on the most critical element of its case—the understatement of *taxable* income and the attempted evasion of a "*tax imposed*".[8] Neither logic nor experience support the assumption that newly acquired funds or assets are necessarily derived from taxable income. The sources of non-taxable receipts are numerous. There are hundreds of reported decisions involving complex litigation over the issue of whether or not receipts of one kind or another were taxable income or, if taxable, when the impact of the tax occurred. Nevertheless, the Government would have the courts speculate that every increase in net worth is attributable to income which is taxable during the year involved, without even identifying the source. This shifting of the burden of proof on the theory that it is only the burden of explanation has been recently criticized in the New York University Tax Law Review:

> "Despite the supposedly more severe standards of proof applicable to criminal proceedings, the growing

[8] The basic defect in the Government's position in its net worth proof is pointed up by the comments of the trial court, which, in connection with a hypothetical question, made the following observation (R. 167):

> "I don't believe you have assumed all the factors you need. A man could have a very large amount of interest on tax free bonds and not be liable to any federal income tax liability."

> tendency of permitting cases to go to the jury with essential elements unproved, on the theory that the burden of moving forward with evidence has shifted once the Government proves its case with some degree of probability, permits conviction on evidence which would not result in a finding of civil fraud. Tax Court judges, on the whole, have shown a commendable restraint and prudence in their findings which cannot be expected from jurors swayed by less restrained prosecutors and even, perhaps, by district judges." (Income Tax Penalties, by Emanuel L. Gordon, N. Y. Univ. Tax Law Review, Vol. 5, p. 196).

At the heart of the Government's position is the theme that it is necessary to ease the Government's burden of proof in criminal tax cases predicated on net worth computation. But, "Difficulty of proof is no substitute for actuality of proof." *United States* v. *Buchalter, et al.*, 88 F. 2d 625, 626 (CA 2). Easing the Government's burden of proof is less important than preserving basic rights of defendants. It is certainly clear that where the Government with vast investigative resources at its disposal is unable to prove a single item of unreported income or to demonstrate an undisclosed source of income, the probabilities of innocence are much greater than where the Government has secured direct evidence of fraud. If the Government's burden of proof is eased to the extent that it desires in these cases, the probabilities of convicting innocent people will be greatly enhanced. As this Court said in *Tot* v. *United States*, 319 U. S. 463, 469-470:

> "Nor can the fact that the defendant has the better means of information, standing alone, justify the creation of such a presumption. In every criminal case the defendant has at least an equal familiarity with the facts and in most a greater familiarity with them than the prosecution. It might, therefore, be argued that to place upon all defendants in criminal cases the burden of going forward with the evidence would be proper. But the argument proves too much. If it were sound, the legislature might validly command that the finding of an indictment, or mere proof of

the identity of the accused, should create a presumption of the existence of all the facts essential to guilt. This is not permissible.

* * *

". . . It would, therefore, be a convenience to the Government to rely upon the presumption and cast on the defendants the burden of coming forward with evidence to rebut it. But, as we have shown, it is not permissible thus to shift the burden by arbitrarily making one fact, which has no relevance to guilt of the offense, the occasion of casting on the defendant the obligation of exculpation. The argument from convenience is admissible only where the inference is a permissible one, where the defendant has more convenient access to the proof, and where requiring him to go forward with proof will not subject him to unfairness or hardship."

See also, *Morrison* v. *California*, 291 U. S. 82; *Oleader* v. *United States*, 210 F. 2d 795 (CA 9); *Kirsch* v. *United States*, 174 F. 2d 595 (CA 8); *Nicola* v. *United States*, 72 F. 2d 780 (CA 3).

Moreover, a conviction under Section 145 (b) requires a proof of a specific willful intent—an intent which though it may be established by circumstantial as well as direct evidence cannot be presumed from the understatement of income but must be proven by specific independent evidence. As stated in *Harding* v. *United States*, 179 F. 2d 419, 422 (CA 6):

". . . Such filing is unlawful however only if made wilfully, with knowledge of its falseness and with intent to evade taxes. There is no presumption that may be drawn from the act itself—both knowledge and wilfulness must be established by independent proof, direct or circumstantial."

Where the court proceeds to submit to a jury a Section 145 (b) case predicated solely on the circumstances of increased net worth, the issue of intent is effectively eliminated in contravention of the decisions of this Court in

Spies v. *United States*, 317 U. S. 492 and *United States* v. *Murdock*, 290 U. S. 389; as well as decisions of the Courts of Appeals for the Third, Fourth, Fifth, Sixth, Seventh and Tenth Circuits. *United States* v. *Martell*, 199 F. 2d 670 (CA 3); *Stinnett* v. *United States*, 173 F. 2d 129 (CA 4); *Wardlaw* v. *United States*, 203 F. 2d 884 (CA 5); *Jones* v. *United States*, 164 F. 2d 398 (CA 5); *Hargrove* v. *United States*, 67 F. 2d 820 (CA 5); *Lurding* v. *United States*, 179 F. 2d 419 (CA 6); *Malone* v. *United States*, 94 F. 2d 281 (CA 7); *Haigler* v. *United States*, 172 F. 2d 986 (CA 10).

B. Burden of Proof—Evidence.

1. Net Worth Starting Point.

The Government completely failed to sustain its burden of proving the petitioners' net worth on the starting point date. The Government fixed the petitioners' net worth as of January 1, 1946, at $19,152.59, from which it purported to demonstrate unaccounted for increases in net worth for the years 1946, 1947, and 1948. The figure of $19,152.59 admittedly included only those corporate stocks, the subsequent sale of which was reflected in petitioners' income tax returns (R. 180-181, 187-190, 346-347). In fixing petitioners' opening net worth on January 1, 1946, the only cash included by the Government as an asset was the sum of $2,153.09, consisting of balances in two bank accounts (R. 181). In the petitioners' extra-judicial statements made to the special agent of the Bureau of Internal Revenue, they claimed to have had on January 1, 1946, approximately $113,000 in currency (R. 71-73). The lower courts, as well as the Government, took the view that "the ultimate and precise issue" was whether the jury believed beyond a reasonable doubt "that there was no such fund in existence on January 1, 1946" (R. 350). According to the Court of Appeals the petitioners' "Guilt or innocence turned on a resolution of those issues [relating to the cash fund]" (R. 350). Notwithstanding this, the special agent for the Bureau of Internal Revenue—the chief Government

witness—testified with respect to the petitioners' currency as follows (R. 85):

> "The only question of cooperation which I have in my mind was whether they always told us the truth about their currency, *or not.*" (Emphasis added.)

In view of the doubt specifically expressed by this witness with respect to this critical item, it is apparent that the Government failed to sustain the burden of proving the petitioners' net worth staring point with reasonable definiteness. With respect to this item of currency the present case is similar to *Bryan* v. *United States*, 175 F. 2d 223, 226 (CA 5) affirmed 338 U. S. 552, where the Court of Appeals, in reversing a net worth conviction, observed:

> "But we cannot escape the fact that Mr. Marquis, the auditor, frankly admitted that he did not know whether his computation contained all the assets of the Defendant *or not.*" (Emphasis added.)

Furthermore, the evidence produced by the Government's witnesses clearly established that either on or before January 1, 1946, the petitioner Marion L. Holland was the owner of hundreds and possibly thousands of shares of stock (R. 29-30, 130-132, 141-142). With respect to this stock, the special agent of the Bureau of Internal Revenue testified that the petitioners' "greater purchases were still on hand in 1946" (R. 95). Having proven through its own witnesses the existence of these securities on or before January 1, 1946, the Government completely failed to take into consideration any securities except those the disposition of which was reflected in the petitioners' income tax return for the year 1946 (R. 239, 347). The court below attempted to meet this obvious defect by making the following observation (R. 346):

> ". . . The representative of the bank where the stocks were pledged for loans testified that all the stock pledged for collateral was liquidated or withdrawn early in 1946, and thereafter all other loans were se-

> cured by deeds of trust. Subsequent returns for the period in question did not reflect the sale of any stock. If, therefore, any stocks remained unsold in 1946, they must be assumed to have remained in his custody and could therefore have no bearing on his net worth as established by purchases and expenditures."

In thus disposing of the petitioners' contention the court below ignored the principle that the Government must prove the opening net worth with reasonable certainty. Certainly the fact that the stock was liquidated or *withdrawn* does not establish its non-existence on January 1, 1946. Nor is there any basis for the court's critical assumption that any stock which had not been sold prior to 1946 necessarily remained in the petitioners' custody and had "no bearing on his net worth" (R. 346). Unless a gain was realized on a subsequent disposition of the stock no duty would have been imposed upon the petitioner to report the transaction on his income tax return. Moreover, the stock could have served as collateral for the borrowing of additional funds. The important consideration, however, is that the court below found it necessary to fill in an obvious gap in the Government's case by speculating as to the possible subsequent disposition of securities which were proven to have existed on or before January 1, 1946, and which were neither accounted for by the Government nor taken into consideration in the net worth statement. With respect to these securities the present case is similar to *United States* v. *Fenwick*, 177 F. 2d 488, 491 (CA 7), where the Court of Appeals, in reversing a net worth conviction, observed:

> ". . . The agent testified that defendant had certain corporate stock but the prosecution offered no proof as to the amount owned by defendant in 1942 or whether any part or all of it was sold in 1943 or in 1944."

Another critical deficiency in the Government's case was its failure to negative in any way the possible existence of a separate estate for the petitioner Ethel E. Holland.

The evidence also established that the Government's investigation was defective. The special agent who conducted the investigation stated that he made no inquiry at the banks where petitioners had informed him they had turned in gold for cash (R. 86-87); that he did not check into the records of the County Clerk of Denver County to determine whether or not, in fact, properties were bought and sold by Mr. Holland at a profit as indicated in his statement (R. 94); and that he made no check of the records to determine whether or not it was true that petitioners had realized substantial profits as a result of certain restaurant sales (R. 99). Conceivably, it was these deficiencies in the investigation which led the Government's key witness to indicate doubt on the most critical element relating to the opening net worth computation—the cash fund.

The Government and the court below viewed the burden of establishing the opening net worth and indeed of establishing the offense as being satisfied by the mere introduction of circumstantial evidence relating to petitioners' financial history and calculated to demonstrate that the petitioners were not affluent during the years prior to the taxable period so that they could not have accumulated the cash fund. As previously indicated, the court below stated that the "ultimate and precise issue in the case was whether they [the jury] believed beyond a reasonable doubt from the established circumstances that there was no such fund in existence on January 1, 1946." (R. 350) That the Government should expect this form of evidence to be sufficient, either to establish the net worth starting point, or to establish a violation of the statute, is particularly extraordinary in light of the position which it took in its petition in *Calderon* v. *United States*, 207 F. 2d 377 (CA 9), certiorari granted 347 U. S. 1008. There, in contending that an extra-judicial admission relating to cash on hand need not be corroborated, the Government stated (Petition, p. 7):

> ". . . The amount of cash on hand is not in itself either the *corpus delicti* or an essential element of the offense of willful tax evasion. A conviction could not rest on such an admission alone. Without other evidence establishing that income received was not reported, the cash item would be meaningless."

Moreover, circumstantial evidence of financial history is so highly speculative and conjectural as to be of doubtful evidential value even for the most limited purposes. The speculative nature of the evidence is perhaps best demonstrated by the fact that petitioner Marion L. Holland, whom the Government pictures as on the brink of poverty for the 20-year period preceding the opening net worth date, was, in fact, during that period very actively engaged in the purchase and sale of securities on the stock market and, even according to the Government's computation, had on hand on the opening net worth starting point date stock originally costing approximately $30,000 and worth in excess of $52,000 (R. 95-96, 181, 189, 239). (Brief in Opposition, p. 8).

Thus, even assuming the competency of the petitioners' extra-judicial statements introduced by the Government, the net worth staring point evidence was so defective as to vitiate the entire net worth computations. The assumption of competency, however, is of doubtful validity in light of the Government's failure to comply with the requirement for corroborating extra-judicial statements. At the trial, petitioners did not take the stand. The prosecution, however, used their extra-judicial declarations to Government agents in two ways. First, because the petitioner Marion L. Holland declared that he had accumulated a substantial cash fund, the Government and the courts below took the position that refutation of that single hypothesis would suffice to establish the net worth staring point. Second, the Government and the courts below utilized the statements as an affirmative admission that no funds or

assets other than those stated existed on the net worth starting point date.[9]

The rule rendering incompetent as evidence, and insufficient as proof any extra-judicial confessions, admissions, or declarations which are not adequately corroborated by independent evidence, has been uniformly accepted by state and federal courts, notwithstanding that the policy of the rule has occasionally been questioned. *Warszower* v. *United States*, 312 U. S. 342; *Calderon* v. *United States*, 207 F. 2d 377 (CA 9), certiorari granted 347 U. S. 1008; *Spriggs* v. *United States*, 198 F. 2d 782 (CA 9); *United States* v. *Markman*, 193 F. 2d 574 (CA 2); *Bell* v. *United States*, 185 F. 2d 302 (CA 4), certiorari denied, 340 U. S. 930; *United States* v. *Fenwick*, 177 F. 2d 488 (CA 7); *Yost* v. *United States*, 157 F. 2d 147 (CA 4); *Ercoli* v. *United States*, 131 F. 2d 354 (CA D. C.); *Anderson, et al.* v. *United States*, 124 F. 2d 58 (CA 6); *Pines* v. *United States*, 123 F. 2d 825 (CA 8); *Gulotta* v. *United States*, 113 F. 2d 683 (CA 8); *Forte* v. *United States*, 94 F. 2d 236 (CA D. C.); *Tingle* v. *United States*, 38 F. 2d 573 (CA 8); *Goff* v. *United States*, 257 Fed. 294 (CA 8). While the corroborating evidence need not establish the corpus delicti beyond a reasonable doubt, the general rule requires that there be independent evidence tending to corroborate each element of the corpus delicti.[10] As stated in *Pines* v. *United States*, *supra*, p. 830:

> ". . . there is therefore lacking a vital link in the chain of circumstances by which it is sought to estab-

[9] In this connection, the Government sought in its brief in opposition (p. 8) to use the extra-judicial statement as a specific admission that on the net worth starting point date the petitioner only had those securities the subsequent sale of which was reflected in his income tax return for the year 1946. However, it has been pointed out in the reply to the brief in opposition that petitioner actually stated in his extra-judicial declaration that he did not know and was not sure whether he held securities in addition to those referred to (Reply to Brief in Opposition, p. 2) (R. 302).

[10] The corpus delicti is commonly defined as "the body or substance of the crime" and incorporates "The existence of a certain act or result forming the basis of the criminal charge, . . . and the existence of a criminal agency . . ." (23 C. J. S., Sec. 916).

> lish the transportation in interstate commerce. The corpus delicti includes not only the body or substance of the crime, but also the criminal means by which it was committed. The corroboration is not sufficient if it tends only to support the admission. It must embrace substantial evidence of the corpus delicti, though it need not in itself be sufficient proof of guilt."

Applying the doctrine to extra-judicial statements, courts have held, for example, that in crimes where scienter is a necessary element of the proof, there must be corroborating evidence specifically tending to establish guilty knowledge or intent. See, for example, *Forte* v. *United States*, 94 F. 2d 236 (CA D. C.); *Naftzger* v. *United States*, 200 Fed. 494 (CA 8). In the present case, however, apart from the circumstantial evidence relating to the financial history of the petitioners and to the cash fund hypothesis—a hypothesis suggested in an extra-judicial statement—there was virtually no independent evidence relating either to the net worth starting point or to the elements of the offense. At the minimum, the corpus delicti would have to include evidence tending to show that the petitioners understated their taxable income in the year for which they were convicted of violating Section 145 (b). There was no such evidence here.

The present case differs from the multitude of cases not based "solely on the circumstances of increased net worth" (R. 342), where the Government, by way of corroboration, was at least able to demonstrate willful failure to keep adequate books and records, undisclosed sources of taxable income, failure to reflect a multitude of financial transactions and specific individual items connoting probability of fraud. See cases cited *supra*, p. 26.

The Government's position, as indicated in other cases,[11] is that the rule requiring corroboration of extra-judicial admissions and declarations is limited solely to confessions

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[11] *E.g.*, Brief for the United States in Opposition, *Opper* v. *United States*, 211 F. 2d 719 (CA 6), certiorari granted 347 U. S. 1010.

of guilt. No sound basis for this distinction exists. An examination of many decisions reveals that the rule is customarily stated as applying in the case of confessions, admissions or declarations.[12]

Moreover, the distinction has been specifically rejected on several occasions. In *Spriggs* v. *United States*, 198 F. 2d 782, 783 (CA 9), the Court of Appeals commented:

> "Whether this evidence, upon which the judgment below must stand or fall, is to be regarded as a confession, or as admissions, or as extrajudicial statements, is of no consequence here. Under any name, they are insufficient to sustain the conviction, for there has been no independent proof of any crime having been committed. We deem it unnecessary to decide whether the lower court erred, as appellant contends, in admitting this testimony of certain government agents concerning statements made to them by appellant. Even if the admissibility of such testimony be assumed, arguendo, the government case still falls far short of establishing the guilt of appellant by the further evidence, required by our decision in Davena, Jr. v. United States, 9 Cir., 198 F. 2d 230."

Again, in *Gulotta* v. *United States*, 113 F. 2d 683, 685 (CA 8), the court stated:

> "A distinction between confessions and admissions as evidence in a criminal case is, for some purposes,

[12] For example, in *Goff* v. *United States*, 257 Fed. 294, 295 (CA 8), the Court of Appeals stated (3a) the rule as to "effect of statements or confessions in establishing the corpus delicti is as follows: 'A conviction upon *extra-judicial confession, or acts or declarations of a prisoner*, will not be sustained, without corroborative proof that the property was in fact stolen.'" In *Pines* v. *United States*, 123 F. 2d 825, 829 (CA 8), the same court stated "This, being the corpus delicti, could not be presumed, nor could it be established by *extra judicial declaration, confession or admission of the defendant*." In *United States* v. *Chapman*, 168 F. 2d 997, 1001 (CA 7), the court agreed with the taxpayer's contention that "the starting point must be based upon a solid foundation and a Revenue Agent's statement of the defendant's oral *admission or confession* when uncorroborated is not sufficient to convict." (Emphasis added.)

generally recognized. A confession is a declaration made by the accused admitting his participation in the crime with which he is charged. It is a direct acknowledgement of guilt. An admission is a statement, direct or implied, of facts tending to establish guilt. It is not an acknowledgement of guilt but of facts and circumstances, which, if taken in connection with proof of other facts, may permit an inference of guilt.

". . . If a false confession of guilt may be obtained from an innocent person by the use of coercion or flattery it is equally true that an admission of any element of the crime may also be obtained by the same means. On the principle that it is better for society that the guilty should occasionally escape than that the innocent should be punished, exceptions should not be grafted upon long-established rules until their need has been clearly demonstrated.

"The rule that to warrant conviction of a crime both confessions and admissions must be corroborated by some independent evidence is illustrated in cases very similar to the present. . . . Indeed, there is no sound reason why an uncorroborated voluntary admission of some element of crime should be given greater force as evidence of guilt than is accorded the accused's outright confession of the crime itself."

See also, *Ercoli* v. *United States*, 131 F. 2d 354, 356 (CA D. C.).

This Court itself has gone far toward eliminating any basis for such distinction in *Bram* v. *United States*, 168 U. S. 532. The question there was whether or not the extra-judicial statement used by the prosecution was admitted in evidence without a proper showing that it was voluntarily given. The defendant had vigorously denied his guilt, but the statements made in the process of denying guilt were used against him. This Court stated (p. 541):

". . . It is also clear that in determining whether the proper foundation was laid for its admission, we are not concerned with how far the confession tended to prove guilt. Having been offered as a confession and being admissible only because of that fact, a consideration of the measure of proof which resulted from it

> does not arise in its admissibility. If found to have been illegally admitted, reversible error will result, since the prosecution cannot on the one hand offer evidence to prove guilt, and which by the very offer is vouched for as tending to that end, and on the other hand for the purpose of avoiding the consequence of the error, caused by its wrongful admission, be heard to assert that the matter offered as a confession was not prejudicial because it did not tend to prove guilt. The principle on the subject is thus stated in a note to § 219 of Greenleaf on Evidence: 'The rule excludes, not only direct confessions, but any other declaration tending to implicate the prisoner in the crime charged, even though, in terms, it is an accusation of another, or a refusal to confess.' "

Although the *Bram* case involved the voluntary nature of the declaration, as distinguished from the rule requiring corroboration of a confession, there can be no distinction in principle. This is particularly so since the rationale of the Government's position in distinguishing between exculpatory and inculpatory statements is that only in the case of inculpatory statements is there a danger that the statement will be influenced by extraneous circumstances such as hope of reward or fear of reprisal and that therefore only such statements require corroboration. The *Bram* case implicity rejects such a contention.

2. Understatement of Taxable Income.

Even assuming that the Government established the opening net worth starting point, it would have succeeded only in taking the first step toward establishing a violation of Section 145 (b). Only the possibility that subsequent questioned expenditures were attributable to previously accumulated funds or assets would have been eliminated. Proof that petitioners understated their taxable income was still essential. As previously noted, there was no evidence of any item of unreported income, of any improper deduction, or of any undisclosed source of income (R. 342). In addition, there was no proof that the asserted increase

in net worth was attributable to taxable income; there was no attempt to identify the source of the asserted increase; there was not even any evidence tending to refute the possibility that asserted increases were attributable to particular non-taxable sources, such as gifts or inheritance. Indeed, there was no proof that Government agents had ever investigated the possibility of such non-taxable sources.

The Government in an effort to sustain the conviction here has seized upon and inflated a fragment of testimony as constituting independent evidence of understatement of income. Mr. Leonard DeLue, from whom Mr. Holland purchased the hotel, testified that in 1947 Mr. Holland stated "something . . . to the effect" (R. 35) that business had doubled and that he had already netted enough to pay for a half interest in the hotel. Keeping in mind the relationship of the parties and the casualness of the conversation, this testimony could have little probative value even for the period to which it related.[13] In any event, the evidential value of the alleged conversation which assertedly occurred in 1947 would by its context be strictly limited to the years 1946 and 1947, with respect to which the jury brought in verdicts of not guilty. That the Government should seek to utilize this fragment to support a conviction for the year 1948 to which it had no relation whatsoever, is indeed anomalous. The court below obviously considered this testimony to be entirely devoid of significance since it viewed the Government's case as resting "solely on the circumstances of increased net worth . . . to prove a substantial understatement of taxable income. . . ." (R. 342)

In the light of the general principles referred to under Heading II A, *supra*, relating to the burden of proof, no justification exists for assuming that the asserted increases in net worth reflected taxable income, for creating a pre-

[13] As a matter of fact, the evidence indicated that after Mr. Holland took over the hotel from Mr. DeLue he "lost substantial business" because of added competition (R. 37-38).

sumption to that effect or for shifting to petitioners the burden of proving that the increases in net worth were attributable to non-taxable sources. There was in fact a complete void in the Government's case, for there was not one iota of evidence that the petitioners understated their taxable income, thus evading or avoiding any tax lawfully imposed for the year 1948.

3. Willfulness.

Assuming that there was sufficient evidence of an understatement of taxable income, not one single item of evidence was introduced to justify submission of the case to the jury on the question of willfulness. As the previously cited cases indicate,[14] willfulness involves a specific intent which must be proven by independent evidence and which cannot be inferred from the mere understatement of income. Nothing offered by the Government at the trial remotely resembled the character of evidence which this Court has required[15] to prove willfulness in a prosecution under Section 145 (b). The evidential deficiency in this respect is spotlighted by the trial court's instruction on the question of willfulness (R. 215):[16]

> "It is not necessary for the Government to offer direct proof of any elements of this offense. It is enough if you are satisfied beyond a reasonable doubt by the circumstantial evidence in this case in making your decision and arriving at your verdict. You may infer wilfullness if the inference to your mind is reasonable from all the facts and circumstances in evidence. *You may consider Mr. and Mrs. Holland's relationship to each other, what each did in the business, and all of the acts in evidence that they have committed or failed to commit at any time.*" (Emphasis added.)

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[14] See p. 33, *supra*.

[15] *Spies* v. *United States*, 317 U. S. 492.

[16] While the trial court did not specifically instruct the jury that the necessary intent could be inferred from the understatement of income, there was, in fact, no independent evidence from which the jury could have drawn the inference.

That the inference of willfulness can arise from the marital relationship is novel. Nor can petitioners understand what "the acts in evidence that they have committed or failed to commit at any time" (R. 215) can possibly mean or refer to.

4. Supplementary Comment on Evidence.

Two additional aspects of the present case serve to emphasize its evidential weakness. Indictments were returned for the years 1946, 1947, and 1948. The starting point established by the Government was for the date January 1, 1946. All computations related back to that starting point. There was no dispute as to the fact or amount of subsequent expenditures or acquisitions. Notwithstanding the fact that the case was predicated solely on the circumstances of increased net worth, the jury brought in verdicts of "not guilty" for the years 1946 and 1947 and "guilty" for 1948. This is rendered all the more extraordinary by the fact that, based upon the net worth computations, the indictments charged evasions of tax in the approximate amounts of $15,000 for the year 1946, $14,000 for the year 1947, and $7,500 for the year 1948 (R. 7-8). Petitioners are not unfamiliar with the general principle that inconsistency of jury verdicts is not a matter for reversal. However, the inconsistency here assumes greater significance than is generally the case. See in this respect *United States* v. *George L. Allen* (S. D. Cal., October 20, 1950) Prentiss Hall, Para. 72,785, 1950 CCH 9494, where the trial court in granting a motion for judgment of acquittal, commented:

> "The relevancy of the action of the jury lies in the fact that the acquittal on Count 1 exculpates the defendant as to all matters relating to these two taxable years, 1944, 1945. Ordinarily, a tax evasion for one year is unrelated to a tax evasion for another year, but in this case, if the Government's theory was to prevail, if the jury believes Gauntt, then the pattern of fraud was the same in the first as it was in the second

count. Indeed Gauntt's complaint to the Internal Revenue Bureau delineating what he claims to be falsification of books and the like preceded the filing of the 1945 tax return. Indeed the information given to the investigator delineated the falsification of cash sheets, although Gauntt, in his testimony, claimed he knew nothing about the cash sheets on which the claim of discrepancy was based. It is strange that Gauntt, while disavowing knowledge as to these cash sheets, should have known in advance of their falsity. But be that as it may, the acquittal of the defendant by the jury in the first count indicates that the defendant is not guilty of the pattern of falsification which lay as the basis of both. The jury unconsciously has given support to the conclusion I have reached that the motion for judgment of acquittal made at the conclusion of all the evidence on which ruling was reserved should be granted."

The speculative nature of the evidence upon which the jury was allowed to bring in a judgment of guilty is also well illustrated in connection with the conviction here of Mrs. Holland. The Government's case against her was based on the following assumptions:

a. That there was an unaccounted for increase in net worth for the year 1948;

b. That the unreported income must have been the result of an understatement of gross receipts, there being no other potential source of income; and

c. That since Mrs. Holland prepared the daily sheets showing the gross receipts and turned them over to the bookkeeper, she must have at least aided and abetted a violation of Section 145 (b) (R. 193, 198).

The present case is an ominous example of what can happen when established and long-standing rules of proof are relaxed for asserledly practical considerations. Beginning with an uncertain starting point the Government proceeds in its attempt to establish unreported taxable in-

come, to substitute conjecture and assumption for proof. The consequence is that the taxpayer is faced with the choice of discarding the presumption of innocence and his constitutional right to maintain silence. He is jockeyed into the position where he must prove that asserted increases in net worth were not attributable to taxable income. Thus, he bears the burden of disproving an attempt to evade a lawfully imposed tax. To compound this departure from basic concepts, the case is submitted to the jury with no proof whatsoever of willfulness, the jury being left to infer willfulness from the asserted understatement of taxable income.

The present case should never have been permitted to go to the jury. Even assuming that resort to net worth computations was appropriate, the case was evidentially deficient from every standpoint. A reversal of the judgments with directions to enter judgments of acquittal is therefore required.

III.

THE TRIAL COURT'S INSTRUCTIONS.

Assuming the evidential sufficiency of the Government's case, the trial court's instructions were so erroneous and misleading as to constitute reversible error.

A. Burden of Proof.

(1) Refusal to Instruct on the Requirements of Net Worth Proof.

Despite the judicially recognized need for caution in the application of the net worth technique to criminal cases, the trial court refused to grant either the text or substance of the instructions requested by the petitioners for the purpose of clearly informing the jury as to the requisites of a net worth case (See Instructions 11 and 15, R. 227-228, 229-230). The defendant requested the following instruction (R. 229-230):

"The Court instructs the jury that when the Government relies upon the circumstances of increased net worth and expenditures in excess of reported income to establish income tax evasion, as it does in this case, it must produce evidence that excludes all possible available sources of taxable income from which the increased net worth and the excess expenditures could have been derived. *The net worth expenditures method of establishing net income sought to be applied in this case is effective and can be considered only if the computations of net worth at the beginning and at the end of the question periods can reasonably be accepted as accurate. That is to say, it is incumbent on the Government to establish with accuracy the net worth of the defendants on January 1, 1946, which is the beginning of the period in question, and the net worth of the defendants on December 31, 1948, which is the end of the period in question.* If there is a reasonable doubt in your mind as to the computations of the Government as to the net worth of the defendants on either of these periods, or if there is a reasonable doubt in your mind as to whether the Government, in making its computations of net worth as to either of these periods, omitted assets of the defendants, such as cash on hand, stocks or other securities, then you should return a verdict of not guilty.

"One of the essential elements that the Government must establish in this case is that the defendants had no other assets on January 1, 1946, other than those which the Government contends they had on said date." (Emphasis added.)

Certainly petitioners were justified in requesting the trial court to instruct that in a net worth case the Government must establish the starting and ending points with accuracy. The failure to so instruct was particularly unjustified in light of the vigorous objections to the charge by counsel for the petitioners (R. 219-220):

"We particularly object to the charge your honor gave the jury because you have failed to instruct the jury on the principal element in the case, which is set forth in the tendered instructions that we offered to your honor before the charge was given. Instructions

Nos. 11 and 15. This being a net worth case, it is incumbent upon the prosecution to establish the net worth of the defendants at the beginning of the period in question with reasonable certainty; namely, January 1st, 1946, and also to establish the net worth of the defendants at the end of the period in question; namely, December 31st, 1948. If they fail to do that, and if they fail to include in the net worth at the beginning of the period assets which the defendants had at that time, then the entire cornerstone of their case has fallen and the jury should return a verdict of not guilty."

(2) Limitation and Shifting of the Burden of Proof.

The total effect of the trial court's instructions was to limit the Government's burden to that of discrediting a single hypothesis—the cash fund suggested in the petitioners' extra-judicial statements. Moreover, the phrasing of the instruction was such that it suggested to the jury that the petitioners were to be found guilty if they did not establish the veracity of this hypothesis or some other hypothesis of innocence. Thus, the trial court instructed the jury as follows (R. 209-210, 212-213):

"Now the defendant comes here and he claims through his counsel, first, that if he bought any property in '46, '47, and '48, he didn't pay for it out of any receipts from the business he is operating; that he paid for it out of the cash reserve of a hundred and four thousand, or a hundred and thirteen thousand dollars, which at different times it has been stated in here he had. He claims that he didn't accumulate that money after he bought the Holland House, nor in the taxable years in question here. He says he didn't get it from that source, and he denies that he failed to report all the earnings from that business. He says he had a hundred and four, or a hundred and thirteen thousand dollars, in ten dollar bills, and twenty dollar bills, and some hundred dollar bills. He says he kept that for years. He said he had that accumulated by 1933; that he kept it intact and didn't spend it from 1933 until 1946, and he says 'Sure, my

net worth increased at the end of '46, certainly increased further at the end of '47' and he said 'Of course it increased more still by the end of 1948.' But he said it increased by reason of the fact that 'I have reached into the black canvas bag' or his safety deposit box, or whatever else he kept it in, and he says, 'I have bought these properties and increased my net worth, as you say, by buying the property with that money, and not with money earned and unreported in the tax years in question.'

* * *

". . . Some emphasis was made in the arguments to you, Ladies and Gentlemen of the Jury, that there was no evidence here that any statement on the income tax returns for '46, '47, and '48 has been shown to be false. *That isn't the issue in this case.* The issue in this case is whether or not these defendants filed those income tax returns, reporting the income on those returns and the tax computed from it, knowingly and wilfully not including gross receipts from the business which the Government claims they earned, and which the Government claims they didn't report.

"The Government proceeds upon the theory that there was no such cash fund of a hundred and four thousand dollars, or a hundred and thirteen thousand dollars, and that the increases in their net worth each year were the result of purchases from receipts earned in the taxable years in question from that business. That is the Government's position.

* * *

"If you believe, Ladies and Gentlemen of the Jury, and are satisfied beyond a reasonable doubt that the Government's evidence that Mr. Holland and Mrs. Holland did not have that cash fund, or any other source of the money with which they increased their net worth except the gross receipts of this business in the taxable years in question, then you should bring in a verdict of guilty, if you also find Ladies and Gentlemen of the Jury that they have proved to your satisfaction, beyond a reasonable doubt, all of the essential and material elements of the charges in this indictment." (Emphasis added.)

Petitioners agree with the Government (Brief in Opposition, p. 11), that a careful search through the trial court's instructions may produce some language or phraseology in which it was suggested to the jury that more was involved than the discrediting of the cash fund theory. However, as the Government has so often argued, and the courts have so often held, the meaning of the court's instructions cannot be gleaned from a sentence or two selected from the text. The total effect of the instructions was to tell the jury that innocence or guilt depended upon cash fund or no cash fund. The Court of Appeals specifically adopted the view of the trial court in stating that it "agree[d] with the trial court that the ultimate and precise issue in this case was whether they [the jury] believed beyond a reasonable doubt from the established circumstances that there was no such fund in existence on January 1, 1946" (R. 350). Petitioners, on the other hand, maintain that the ultimate and precise issue was whether the Government proved beyond a reasonable doubt that they willfully attempted to evade or defeat a tax by filing or causing to be filed a false and fraudulent income tax return.[17]

Furthermore, the language of the court is confusing in that it suggested to the jury that unless petitioners proved the existence of the cash fund, or some other non-taxable source, a verdict of guilty should be returned. The present case is not unlike *Boatright* v. *United States*, 105 F. 2d 737,

[17] In its brief in opposition the Government places great emphasis on the phrase "or any other source of money with which they increased their net worth except the gross receipts of this business in the taxable years in question" (R. 213). This fragmentary sentence could hardly change the sense of the entire instruction. Perhaps even more important, this fragment was itself an erroneous statement of the law. No income tax is levied on the gross receipts of any business. *Anderson Oldsmobile, Inc.* v. *Hofferbert*, 102 F. Supp. 902, 904, affirmed 197 F. 2d 504 (CA 4). See also, *Doyle* v. *Mitchell Bros. Co.*, 247 U. S. 179 and *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330. And the petitioners could very well have made new acquisitions out of gross receipts, viz. depreciation for one example, without having understated their taxable income.

740, where the Court of Appeals for the Eighth Circuit commented:

> "The court also charged the jury as follows: 'On the other hand, if you should find and believe from the evidence in this case that these defendants did not devise an artifice or scheme to defraud; that they did not make false and fraudulent representations or pretenses; that if such were made there was no intention on their part to defraud, and no intention on their part to obtain money or property by means of the representations made, then it would be your duty to find either one or both of them not guilty, according to what you believe, or either one of them, according to what you believe, if they were without fraudalent intent.'
>
> "The defendants complain that this shifted to them the burden of proving their innocence. It was, of course, incumbent upon the Government to prove every essential element of the offense charged. Unless the Government thus established the guilt of the defendants beyond a reasonable doubt, they were entitled to an acquittal. But this instruction placed upon the defendants the burden of convincing the jury that they did not devise a scheme, that they did not make false representations, that they did not intend to defraud, that they did not intend to obtain money by false pretenses. The instruction, we think, was erroneous. Drossos v. United States, 8 Cir., 2 F. 2d 538; State v. Trudell, 49 S. D. 532, 207 N. W. 465; Minner v. United States, *supra*."

See to the same general effect, *Bihn* v. *United States*, 328 U. S. 633; *Olender* v. *United States*, 210 F. 2d 795 (CA 9); *Nicola* v. *United States*, 72 F. 2d 780, 788 (CA 3).

(3) Burden of Proof Beyond a Reasonable Doubt.

The following instruction given by the trial court on reasonable doubt was clearly defective (R. 217):

> "I have used the term here, Ladies and Gentlemen of the Jury, of 'beyond a reasonable doubt.' It is not to be expected that you know what the Court means

by that language. So I am going to tell you what I mean. When I say that the Government must bring before you evidence which satisfies your minds beyond a reasonable doubt, the court does not mean that you should understand that the Government has the burden of satisfying you beyond every doubt, to remove every doubt, leaving no doubt at all. What we are talking about is a doubt based upon reason and common sense, in the exercise of your intelligence. It is a substantial doubt, not a trivial doubt; a significant doubt, not a flimsy one; a real doubt, and not an imaginary one. It's the kind of doubt, Ladies and Gentlemen of the Jury, which you folks in the more serious and important affairs of your own lives *might be willing to act upon.* Now if you feel such a *doubt about the Government's case,* it is your duty to acquit them." (Emphasis added.)

Assuming the propriety of a personal business test in a criminal case,[18] the trial court stated the proposition backwards. Obviously "the kind of doubt" is not such doubt as would lead the jury to act, but rather is one which would lead them to refrain from acting or to hesitate to act. Thus, in *Bishop* v. *United States,* 107 F. 2d 297, 303, the Court of Appeals for the District of Columbia, while approving the personal business test in that instruction, stated that the doubt was "such a doubt as would cause reasonble men to hesitate to act upon it in matters of importance to themselves." In *Commonwealth* v. *Miller,*

[18] Although this Court in *Hopt* v. *Utah,* 120 U. S. 430, 437, approved an instruction on reasonable doubt which incorporated the so-called personal business test, petitioners seriously doubt that satisfaction for the purposes of one's important personal business affairs is the proper standard to be applied in a criminal case in which an individual's life or liberty is at stake. Petitioners are inclined to believe, with the Court of Appeals for the Ninth Circuit, that this instruction was "approved because it was a part of an instruction which had fully explained the doctrine of reasonable doubt. We do not believe that court (the Supreme Court) will approve the business test when segregated from the other elements which were included in the instruction approved in *Hopt* v. *Utah, supra;*" *Paddock* v. *United States,* 79 F. 2d 872, 877 (CA 9).

139 Pa. 77, 21 Atl. 138, the Supreme Court of Pennsylvania made the following observation:

> "The fifteenth assignment relates to the definition of a 'reasonable doubt'. The learned judge said: 'It is such a doubt as would influence or control you in your actions in any of the important transactions of life.' He did not say that a doubt that would cause one to pause and hesitate was, if fairly derived from the evidence, a reasonable one within the meaning of the criminal law, but that it must be one that would control one's conduct in the important transactions of life. Our actions are determined by the preponderance of considerations. We doubt, hesitate, examine, balance the argument for and against the given action, and act as the preponderance indicates. A doubt that would control our actions in the important transactions of life would be one that was so strong as not to be overcome by the balancing process. *Such a doubt would be practically an unconquerable one. It would lead us not simply to refrain from acting, but to act.*" (Emphasis added.)

See also *State* v. *Rover*, 11 Nev. 343; *People* v. *Bemmerly*, 87 Cal. 117, 25 Pac. 266; *Lovett* v. *State*, 30 Fla. 142, 11 So. 550.

B. Circumstantial Evidence.

The evidence being entirely circumstantial, the petitioners requested the trial court to instruct the jury that the evidence must be inconsistent with their innocence, excluding every reasonable hypothesis other than that of guilt (R. 227-228). The trial court not only refused to give such an instruction but gave no instruction which adequately defined circumstantial evidence or properly explained the nature or quality of such evidence so as to guide the jury in its evaluation thereof. Instead, it concluded its circumstantial evidence instruction as follows (R. 210-212):

> "You see this is a complicated case, Ladies and Gentlemen of the Jury, because there is a little bit of circumstantial evidence here, and a little bit of circumstantial evidence over there, and it's going to be your

> duty, Ladies and Gentlemen of the Jury, to arrive at your verdict on the basis of the facts proven to your satisfaction beyond a reasonable doubt, and also on the basis of the inference which reasonably may be drawn from those various facts and circumstances in evidence." (R. 211-212)

This instruction not only failed to explain adequately the circumstantial evidence rule, but suggested to the jury that the requirement for proof beyond a reasonable doubt did not apply to the inference which might reasonably be drawn from circumstantial evidence.

Sharp difference exists among the Courts of Appeals as to the so-called circumstantial evidence rule. The better rule is reflected in a multitude of cases which hold that where the evidence is circumstantial in nature the trial court is required to give the jury some form of instruction to the effect that the evidence must be inconsistent with every reasonable hypothesis but that of guilt. *Pollack* v. *United States*, 202 F. 2d 281 (CA 5); *Epstein* v. *United States*, 174 F. 2d 754, 769 (CA 6); *Strickland* v. *United States*, 155 F. 2d 167, 168 (CA 5); *Cross Co.* v. *Simmonds*, 96 F. 2d 482 (CA 8); *Stutz* v. *United States*, 47 F. 2d 1029 (CA 5); *Eierman* v. *United States*, 46 F. 2d 46 (CA 10); *Gurera* v. *United States*, 40 F. 2d 338, 340 (CA 8); *McLendon* v. *United States*, 13 F. 2d 777, 779 (CA 6); *Garst* v. *United States*, 180 Fed. 339 (CA 4). Particularly interesting to note is the adherence to the rule in criminal net worth cases. *Hanson* v. *United States*, 208 F. 2d 914 (CA 6); *Banks* v. *United States*, 204 F. 2d 666, 672 (CA 8); *Montgomery* v. *United States*, 203 F. 2d 887 (CA 5); *United States* v. *Fenwick*, 177 F. 2d 488, 490 (CA 7); *Bryan* v. *United States*, 175 F. 2d 223, 226 (CA 5), affirmed 338 U. S. 552. The reason for this is apparent. If the evidence is consistent with a reasonable and rational hypothesis of innocence the burden of proof has not been carried and the matter would be left "in the realm of rational speculation or conjecture." *Eierman* v. *United States*, *supra*, p. 48.

As stated by the Court of Appeals in *Cross Co.* v. *Simmonds*, 96 F. 2d 482, 486 (CA 8):

> "To submit to a jury a choice of possibilities is but to permit the jury to conjecture or guess, and where the evidence presents no more than such choice it is not substantial, and where proven facts give equal support to each of two inconsistent inferences, neither of them can be said to be established by substantial evidence and the judgment must go against the party upon whom rests the burden of sustaining one of the inferences as against the other. . . . The impossibility of proof of material facts, while a misfortune, does not change rules of evidence, and leaves the one having the burden of proof with a claim that is unenforcible. *Burnet* v. *Houston*, 283 U. S. 223, 51 S. Ct. 413, 75 L. Ed. 991."

The net worth case, based as it is on a crude and highly speculative technique of computing income, is precisely the kind of case which requires, for the proper guidance of the jury, a specific instruction that the jury is not to guess, or choose between speculative alternatives, but rather is to bring in a verdict of not guilty if the evidence is consistent with any reasonable hypothesis of innocence.

C. Failure to Instruct on Statutory Basis of the Crime.

The trial court not only refused to instruct the jury as to the statute under which the petitioners were indicted,[19] but failed completely to define and explain properly the elements of the offense as set forth in the statute. Instead it submitted to the jury alternative theories of fact, using as its reference point the indictment as distinguished from

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[19] (R. 224): "Defendants' Requested Instruction No. 3. The Court instructs the jury that the indictment and the several counts therein contained are based upon Section 145 (b) of 26 U. S. C. which, so far as pertinent provides as follows: 'Any person required under this chapter to pay over any tax imposed by this chapter, who willfully fails to pay over such tax and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof shall' be guilty of crime."

the statute. In sustaining the trial court in this respect, the court below stated that "The substance of each count in the indictment was recited to the jury . . . every essential element of the crimes charged in the indictment was placed in issue . . . [and] the offense charged is embodied in the indictment" (R. 348). Thus the court below held that so long as an indictment states an offense, and the text or substance of the indictment is given to the jury, the trial court has fulfilled the requirement that it instruct the jury on the applicable statute. The better rule is to the contrary. See the decisions of the Court of Appeals for the Ninth Circuit in *Morris* v. *United States*, 156 F. 2d 525, and the decisions of the Court of Appeals for the Third Circuit in *United States* v. *Pincourt*, 159 F. 2d 917 (CA 3); *United States* v. *Levy*, 153 F. 2d 995; and *United States* v. *Noble*, 155 F. 2d 315. In the *Morris* case, *supra*, p. 527, involving an alleged violation of the Emergency Price Regulation Act, the trial court failed to define the offense as set forth in the statute, instructing instead with reference to the facts charged in the indictment. Even though this instruction was not assigned as error, the Court of Appeals reversed, holding that "the trial court committed fatal error in failing to instruct the jury on the statutes and regulations defining and governing the offenses charged. . . ." It specifically rejected the suggestion that an instruction on the statute could be supplanted by reference to the indictment (Footnote 4 of the opinion in the *Morris case*, *supra*, p. 531).

The Court of Appeals for the Third Circuit specifically adopted the rule in the *Morris* case in *United States* v. *Pincourt*, *supra*, p. 919:

> "Amendment 9 of the Regulation 445 was not explained, read or mentioned by the District Judge in his charge. Without the governing regulation being made plain to it, the jury could not have an informed judgment on the issue and the case did not go to it under the safeguards of correct procedure. Cf. Williams v. United States, 79 U. S. App. D. C. 299, 131 F. 2d 21, 22. The situation presented goes even further than the facts in the latest reported case in point,

> Morris v. United States, 9 Cir., 156 F. 2d 525, where the neglect to define the offense in the Court's charge was held not cured by stating to the jury what essential facts if proven would constitute a violation of a specific price regulation."

As the Government points out in its brief in opposition, p. 18, if careful scrutiny is given to the entire instruction of the trial court, the various elements of the statute will be found scattered throughout. But this misses the point. The defendant is entitled to have the statutory basis of the case explained to the jury in context.

In view of the evidential insufficiency of the present case, the court's action with respect to the granting and denial of instructions has only a secondary importance. Even if the case were evidentially sufficient, however, the rulings of the trial court with respect to its instructions would, at least when considered cumulatively, constitute grounds for granting a new trial.

CONCLUSION.

For the reasons stated above, the judgments of the Court of Appeals should be reversed and the cases remanded to the District Court with directions to enter judgments of acquittal.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1953

MARION L. HOLLAND, AND ETHEL E. HOLLAND,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 650

MARION L. HOLLAND, AND ETHEL E. HOLLAND,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 341-352) is reported at 209 F. 2d 516.

JURISDICTION

The judgments of the Court of Appeals were entered January 21, 1954 (R. 352), and a petition for rehearing was denied February 5, 1954 (R. 374). The petition for a writ of certiorari was filed March 22, 1954. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1). See also

Rules 37 (b) (2) and 45(a), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

Petitioners were convicted of wilfully attempting to evade and defeat income taxes for the year 1948. The Government's proof of unreported income was based solely upon evidence of annual increases in net worth. The questions presented are:

1. Whether the evidence supporting the Government's net worth starting point was sufficient to make out a prima facie case of wilful attempted evasion of income taxes.

2. Whether a failure to show any specific inaccuracy in the taxpayers' books precludes resort to the net worth method to prove that the taxpayers wilfully attempted to evade taxes by failing to record and report taxable income.

3. Whether the trial court properly explained to the jury the nature of circumstantial evidence, and whether it was required to give a specific instruction, in addition to the usual instruction on reasonable doubt, that the defendants should be acquitted if the circumstantial proof was not such as to exclude every reasonable hypothesis except that of guilt.

4. Whether the trial court's instruction adequately explained to the jury the essential elements of the offense alleged in the indictment.

5. Whether the trial court's instruction on "reasonable doubt" was improper.

STATUTES INVOLVED

INTERNAL REVENUE CODE:

SEC. 41. GENERAL RULE.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

(26 U. S. C., 1946 ed., Sec. 41.)

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed

unless the jury found beyond a reasonable doubt that they had wilfully attempted to evade a substantial part of that tax. (R. 214-216.) We submit that the substance of the offense alleged was sufficiently defined and that the contention raised under this point is without merit.

5. Petitioners argue, finally (Pet. 12, 27-29), that the trial court's instruction on reasonable doubt was inaccurate and misleading because it contained the following sentence (R. 217):

> It's the kind of doubt * * * which you folks in the more serious and important affairs of your own lives might be willing to act upon.

In *Miles* v. *United States*, 103 U. S. 304, 309, error was alleged because of an instruction describing reasonable doubt as that upon which a prudent man "would feel safe to act * * * in matters of the highest concern and importance to his own dearest personal interest". This Court approved the instruction and said (p. 312):

> The language used in this case, however, was certainly very favorable to the accused, and is sustained by respectable authority. [Citing cases.]

See also, *Dunbar* v. *United States*, 156 U. S. 185, 198-199; *Wilson* v. *United States*, 232 U. S. 563, 569-570.

The trial court's instruction on reasonable doubt was ample and clear (R. 217), and the clause of which petitioners complain is sanctioned by the

by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * *

(26 U. S. C., 1946 ed., Sec. 145.)

STATEMENT

Petitioners were convicted of wilfully attempting to evade a large part of their income taxes for the calendar year 1948, in violation of Section 145(b) of the Internal Revenue Code.[1] (R. 8, 12.) The District Court imposed sentences of two years' imprisonment and a fine of $10,000 on Marion L. Holland, and a fine of $5,000 on Ethel E. Holland. (R. 12-13.) The Court of Appeals affirmed. (R. 352.)

The evidence to support the verdict may be summarized briefly as follows:

Source of unreported income.—During the years 1946, 1947 and 1948 petitioners operated a hotel in Golden, Colorado, which they acquired from Leonard DeLue on April 1, 1946. (R. 34-35.) DeLue testified that he had netted $11,230.17 from the business for the first three months of 1946 (R. 36), and that Mr. Holland told him in 1947 the

[1] The charge on which petitioners were convicted was laid in the third count of a three-count indictment. The first two counts, involving the years 1946 and 1947, were against petitioner Marion E. Holland alone, and he was acquitted on these. (R. 7-8, 12.)

business had doubled after the transfer and that he had already netted enough to have paid the $50,000 which he had originally offered for a one-half interest instead of the outright purchase ultimately agreed upon. (R. 34, 35.) Holland, however, reported a net income from the hotel of less than $10,000 for the years 1946 and 1947 combined. (R. 235, 243.)

Mrs. Holland kept all the original records of income and expenses at the hotel. She prepared a daily cash sheet which she turned over to the accountant who kept the books. She then destroyed the original cash register tapes. (R. 75, 77-78, 79-80, 151-155, 312-313, 324-325, 332.)

Various property acquisitions by the Hollands in the period 1946-1948 were characterized by gradual and periodic payments, indicative of a current source. A coffee shop adjoining the hotel was purchased in May, 1946, with a $5,000 down payment and the balance of $10,000 nine months later (R. 35); a house was purchased in October, 1946, for $6,000 down and $4,000 payable five months later (R. 46, 47); 160 acres of ranch land were purchased in 1947 for $2,000 down and $4,000 several months later (R. 59, 263, 264); another house was purchased in May, 1947, for $2,000 down with a balance of $4,000 on loan at 6% interest payable at the rate of $100 a month. (R. 63.) Other, similarly gradual acquisitions were proved. (R. 45-46, 52-53, 60.)

Assets at starting point.—Since the evidence indicated that the books did not record all the re-

ceipts, the Government computed petitioners' income by the net worth method. During the investigation of petitioners' tax returns for the years 1946, 1947 and 1948, Internal Revenue agents interviewed Mr. Holland on September 20, 1949 and on October 25, 1949. On the first occasion he stated that his attorney had advised him to give the agents the complete story of his financial affairs, and that his entire assets on April 1, 1946, just prior to purchase of the hotel, consisted of $158,000 in cash. This was composed of $104,000 which he said he had amassed and laid aside in a safe prior to December 22, 1933; $9,000 which he and his wife had saved between 1933 and 1946; and $45,000 which he had derived from sale of stocks. (R. 81-82.) At the second interview Mr. Holland told the agents practically the same story. He said that his assets as of January 1, 1946, the starting point of the Government's net worth computation, amounted to about $157,000. Of this $104,000 was cash allegedly saved prior to December 22, 1933; $9,000 was cash said to have been saved between 1933 and 1946; and the remainder represented stocks which had been acquired between 1933 and 1946 and which he sold prior to his purchase of the hotel. (R. 69-72, 300-303.)

Refuting petitioner's claim that the $104,000 in question had already been accumulated in December 1933 (R. 71), the Government showed that at that time the Hollands had a business failure and abandoned their restaurant business to creditors. (R. 75, 76.) Mr. Holland had admitted

that he had been sued by creditors prior to the time he went out of business. And he said that when his obligations became too great or the suits against him too numerous in the period prior to 1933, he formed new corporations to get a new start. (R. 75.)

There was proof that the petitioners bought furniture on the installment plan in 1933 and that the furniture was repossessed in December of that year with an unpaid balance of $92.20. (R. 103-104.) A bank president testified that petitioners had an unpaid dairy bill dating from the 1930's on which they made a compromise payment in 1946. (R. 105.) It was shown that a judgment of $506.66 against Holland for delinquent business rent for the year 1930 remained unpaid until 1950. (R. 112, 139.) And there was testimony that in 1937 or 1938 Mr. Holland had said that "he had very little money at that time", that "he had gone broke in the restaurant business in Denver", and that "he would like to make some business ventures, but he did not have the money to do so." (R. 127.)

The Government showed that during the period from December 1933 to January 1, 1946, throughout which Holland had claimed to have in his possession $104,000 or more in cash, he had worked as a vacuum cleaner salesman and as a chef at various times (including one seven-year period at a salary of $175 a month). While Mr. Holland worked as a chef in Wyoming, his wife and son lived in Denver where Mrs. Holland worked as a secretary for a small salary because "it was to their economical

advantage to remain under those conditions." (R. 76, 78.) During the period 1937-1939 and in 1941, Holland made a number of small loans ranging from $200 to about $2,000. (R. 102, 130-131.)

As has been noted above (*supra*, p. 6), Mr. Holland told the agents that he sold all his securities, which he valued at $45,000 to $50,000, before he purchased the hotel in April 1946. The admission is supported by the 1946 return which reports sale of stocks in February 1946 for a price of $52,142.78, the original cost to Mr. Holland being $29,650. (R. 239.) Further corroboration appears in the fact that, whereas Mr. Holland continually used stocks as collateral for bank loans up until February, 1946, all subsequent loans were secured by a trust deed and by assignments of life insurance policies. (R. 29-30.) Mr. Holland continually bought and sold stocks (R. 95-96), and only a few of the stocks deposited with the National Bank of Denver from time to time as collateral were still held by that bank at the beginning of 1946 (cf. R. 29-30 with Pet. 8-9). The record reference to stocks held by the Wyoming National Bank until "July 29, 1948" is clearly a mistake for "July 29, 1938." (Cf. R. 141 and Pet. 9 with R. 144, 176.)

Net worth Computation.[2]—In view of the above evidence developed by the agents' investigation,

[2] Although the record at large contains evidence of all the items included in the Government's net worth computation, no witness stated the results in summary and computed the additional taxes evaded by petitioners. The Government attempted to have this done by an expert witness, but the trial judge sustained a defense objection and told the prosecutor that he could make the arithmetical computations for the jury himself. (R. 161-169.) The charts used by the prosecutor in

the Government eliminated from the net worth computation the large cash accumulation claimed by petitioners. The investigation revealed that petitioners had bank balances amounting to $2,153.09 as of January 1, 1946, and they were credited with the cost price, $29,650, of the stock which Mr. Holland admitted he sold shortly before purchase of the hotel. Liabilities at the starting point amounted to a little less than $13,000, making the starting point net worth $19,152.59. The computation revealed unreported income for the year 1948 in the amount of $20,938.48. (R. 24, 34, 102, 111-112, 139; cf. 180-193.)

Petitioners did not take the stand in their own behalf and rested after presenting three character witnesses. (R. 193-197.)

ARGUMENT

1. Petitioners urge primarily (Pet. 2, 11, 14-18) the purely factual question whether the Government's proof was sufficient to establish the starting point on January 1, 1946, for the net worth computations which showed tax evasion. Misreading the trial court's instruction to the jury, they press substantially the same contention in their claim (Pet. 3, 12, 21-24) that the burden of proof was improperly shifted to them. However formu-

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explaining the computation to the jury (cf. R. 199-203) have not been included in the record. The prosecutor did, however, summarize all the items which went into the computation, and he stated the results in terms of unreported income, during argument on the motion for judgment of acquittal at the close of the Government's case. (R. 179-193.) Petitioners also refer to the figures given by the prosecutor in this summation. (Pet. 6.)

lated, the issue of the sufficiency of the evidence, resolved against petitioners by the jury and both courts below, could scarcely warrant certiorari even in a case more doubtful than this. In any event, the evidence was clearly sufficient.

Without repeating our summary of the evidence, it showed, from Holland's own admissions and his 1946 tax return, that the Government correctly fixed the cost of the stock he owned at the starting point at $29,650.[3] Again on Holland's own admission (*supra*, p. 6), the remainder of his assets at the starting point consisted of cash, and the problem for investigation and proof at the trial was to determine the amount of this cash. Careful investigation disclosed bank balances of $2,153.09, and petitioners were credited with these.

But petitioner Holland, while he did not testify, had told Internal Revenue agents that he had kept in his home, during the years 1933 to the starting point on January 1, 1946, over $104,000 in currency. And so the Government's detailed investigation and proof was directed to this possibility. Exhaustive testimony showed that during most of

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[3] Despite its solid support in Holland's admissions and tax return (R. 82, 239, 301-302), the Government's figure for the cost of the stock owned at the starting point is attacked (Pet. 15-16) with the speculative suggestion that there may have been much more stock than the proof accounted for. Of course, no case could ever foreclose all possibilities of such speculation. What is important, however, is that reasonable jurors could certainly find on the record in this case that possibilities of this sort had been disproved beyond a reasonable doubt. Cf. *United States* v. *Johnson*, 319 U.S. 503, 517-518; *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 254; *Glasser* v. *United States*, 315 U.S. 60, 80; *Gorin* v. *United States*, 312 U.S. 19, 32.

the period from 1933 to 1946 the petitioners were in obviously straitened circumstances. The jury could reasonably find, as it did, that Holland's statement was false and that the Government's figure showing his cash assets at the starting point was correct.

This did not result, as petitioners contend (Pet. 21-24), in shifting the burden of proof in the sense that the Government was required only to disprove the existence of the claimed $194,000 in cash. Indeed, the very portion of the charge to the jury petitioners cite in this connection refutes their contention. The trial court charged that, in order to convict, the jury must find that the petitioners "did not have that cash fund, *or any other source of the money with which they increased their net worth* except the gross receipts of this business in the taxable years in question * * *" (R. 213; emphasis added). The jury—having before it, in addition to the net worth information, evidence that petitioners had grossly understated the income from their hotel business (*supra*, pp. 4-5)—was fully justified in reaching the conclusion requisite to its verdict of guilty.

Turning on its particular facts, this result does not present the conflict petitioners assert (Pet. 11, 17) with either *Bryan* v. *United States*, 175 F. 2d 223 (C. A. 5th),[4] or *United States* v. *Fenwick*, 177 F. 2d 488 (C. A. 7th). In each of these cases there

[4] Affirmed without consideration of the present issue when Bryan petitioned for a writ of certiorari to review the refusal of the Court of Appeals to enter a judgment of acquittal instead of an order for a new trial. *Bryan* v. *United States*, 338 U.S. 552.

was a defective investigation, and the proof left strong ground for believing there might be assets the Government had not discovered. See 175 F. 2d at 226; 177 F. 2d at 491.[5] Here, there is no comparable defect, and, in the words of the test stated in the *Bryan* case itself (at p. 225), "the computations of net worth at the beginning and at the end of the questioned periods [could] reasonably be accepted as accurate."

Finally, petitioners note in the present connection (Pet. 11, 17) that the Government's pending petition for certiorari in *United States* v. *Calderon*, No. 577, this Term, cites the instant case among others (at p. 9) to show that *Calderon* is "inconsistent in principle with holdings in other circuits that the Government can make a prima facie showing of understatement of income without necessarily presenting evidence as to the exact amount of cash on hand at the starting point." In our view, that principle, which is not the primary ground of the petition in *Calderon*, is but a special application of the settled rule that "it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances

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[5] Thus, in *Bryan*, the net worth starting point showed the defendant with $107,000 in assets, which consisted almost wholly of real and personal property and only $40.70 in cash. When to this apparently lopsided picture there was added the auditor's concession that he did not know whether there was more money, the Court of Appeals found the investigation insufficiently thorough to warrant conviction. Similarly, in *Fenwick*, the United States Attorney flatly observed at the trial that there might have been assets the Government had failed to discover.

and which if untrue could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control." *Rossi* v. *United States*, 289 U. S. 89, 91-92. While we think the departure from this principle in *Calderon* adds to the grounds for certiorari there, we think its application in the instant case, conforming to decisions of this Court and other courts of appeals, does not require review.

2. Petitioners argue (Pet. 11-12, 18-21) that their books and records were "adequate," that no specific inaccuracy in these materials was proved, and that resort to the net worth method to show they had evaded taxes was therefore improper.[6] This contention was not made in either of the courts below. But even apart from this defect of untimeliness, the argument, which confuses bookkeeping form with factual substance, is without merit.

The precise point of the jury's verdict in this case, approved by both courts below, is that peti-

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[6] The validity of this method of proof, which is essentially indistinguishable from the so-called "expenditures" method of proof sustained by this Court in *United States* v. *Johnson*, 319 U.S. 503, has long been recognized in the lower federal courts. *Banks* v. *United States*, 204 F. 2d 666 (C.A. 8th), certiorari denied, 346 U.S. 857; *Schuermann* v. *United States*, 174 F. 2d 397 (C.A. 8th), certiorari denied, 338 U.S. 831; *Bell* v. *United States*, 185 F. 2d 302 (C.A. 4th), certiorari denied, 340 U.S. 930; *United States* v. *Potson*, 171 F. 2d 495 (C.A. 7th); *Gendelman* v. *United States*, 191 F. 2d 993 (C.A. 9th), certiorari denied, 342 U.S. 909; *Barrow* v. *United States*, 171 F. 2d 286 (C.A. 5th); *Gariepy* v. *United States*, 189 F. 2d 459 (C.A. 6th); *Brodella* v. *United States*, 184 F. 2d 823 (C.A. 6th); *Kirsch* v. *United States*, 174 F. 2d 595 (C.A. 8th); *Pollock* v. *United States*, 202 F. 2d 281 (C.A. 5th); *Leeby* v. *United States*, 192 F. 2d 331 (C.A. 8th); *Dawley* v. *United States*, 186 F. 2d 978 (C.A. 4th); *United States* v. *Chapman*, 168 F. 2d 997 (C.A. 7th); certiorari denied, 335 U.S. 853.

tioners had been proved by circumstantial evidence to have considerably more income than their books and records showed. It was thus shown that their books were not in fact "adequate" in the only sense which is pertinent here. The books were, in a word, false.

This is not to say that there was anything wrong with petitioners' accounting methods as methods. Nor, contrary to petitioners' suggestion (Pet. 19), did the Government's case against them entail any deviation from their "method of accounting"—unless the substitution of truth for falsity be deemed such a deviation. The short of this matter (which is discussed more fully at pp. 48-54 of our brief in *Remmer* v. *United States*, No. 304, this Term, decided on another point, March 8, 1954) is that there is no ground in reason or precedent for the suggestion that taxpayers, by keeping formally "adequate" records and preventing proof of any specific omissions or inaccuracies, may preclude the Government from proving attempted tax evasion by showing substantial increases in net worth for which the only reasonable explanation is unrecorded and unreported taxable income.

3. Petitioners contend (Pet. 12, 24-25) that the trial court failed to instruct the jury adequately on the nature of circumstantial evidence, and that the court erred in refusing to give a requested instruction (R. 219, 228) to the effect that where the evidence of guilt is entirely circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt. Substantially the same contention was made in *McFee* v. *United*

States, No. 414, this Term, in which certiorari was denied on March 15, 1954. The arguments against certiorari in *McFee* (see Brief in Opposition, pp. 10-15), to which the Court is respectfully referred, apply with equal force here.[7]

Petitioners, undertaking to distinguish the *McFee* case (Pet. 24-25), concede that the court need not instruct the jury in the precise form requested by counsel. And their argument falls with this concession. For, reading beyond petitioners' partial quotation from the charge (Pet. 24), it becomes evident that the jurors were properly instructed. In addition to instructing on the presumption of innocence (R. 212) and reasonable doubt (R. 212, 217), the trial court explained at considerable length the nature of circumstantial evidence. After summarizing the theories of both the prosecution and the defense, the judge pointed out that the Government's evidence of attempted tax evasion was circumstantial, since it purported to establish unreported taxable income by proof of increases in net worth, the only reasonable source of which was current income. (R. 207-210.) He then distinguished direct from circumstantial evidence by telling the jury that they could arrive at a conviction of guilt beyond a reasonable doubt either

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[7] While the petition for certiorari was pending in the *McFee* case, the attention of the Court was called to a recent conflicting decision of the Court of Appeals for the Sixth Circuit in *Hanson* v. *United States*, 208 F. 2d 914, 916. However, the question does not appear to have been adequately considered in that case, and the two decisions upon which the Sixth Circuit relied were, as we showed in our brief in opposition in *McFee* (pp. 11, 12), either not in point or discredited by subsequent authority.

directly from the evidence or by using their intelligence and common sense to draw reasonable inferences from the facts which had been proven, and he illustrated the nature of circumstantial evidence by pointing out the various inferences that could be drawn from the proven fact that petitioner Marion Holland was a successful speculator in the stock market. (R. 210-212.) The jurors were repeatedly told that the evidence must be sufficient to establish guilt beyond a reasonable doubt before they could convict (R. 207, 210, 212, 213-214, 215, 216, 217). They were specifically instructed (R. 215):

> It is not necessary for the Government to offer direct proof of any elements of this offense. It is enough if you are satisfied beyond a reasonable doubt by the circumstantial evidence in this case in making your decision and arriving at your verdict.

Finally, stating the substance of petitioners' requested charge, the trial court told the jury (R. 213):

> If you * * * are satisfied beyond a reasonable doubt * * * that Mr. Holland and Mrs. Holland did not have that cash fund, or any other source of the money with which they increased their net worth except the gross receipts of this business in the taxable years in question, then you should bring in a verdict of guilty, if you also find * * * that they have proved to your satisfaction, beyond a reasonable doubt, all of the essential and material elements of the charges in this indictment.

In a word, reading the charge as a whole, it is clear that the jury was adequately instructed in the nature of circumstantial evidence and the need for proof beyond a reasonable doubt to sustain a conviction.

4. Petitioners complain (Pet. 13, 25-27) that the trial judge did not read the applicable statute to the jury during the course of the instruction and did not define the elements of the offense, but that he simply read the indictment and told the jury what facts they would have to find in order to return a verdict of guilty. Petitioners assert that the Second Circuit has approved this method of explaining the offense charged in the indictment,[8] whereas the Third and the Ninth Circuits have condemned it.[9] In the circumstances of this case, this argument presents no basis for review by this Court.

It may be that some conflict exists as to the propriety of reading the indictment and then telling the jury what facts constitute guilt without further definition of the offense. But all the cases cited by petitioners agree that it is sufficient if the trial judge explains the substance of the offense in his own language. It is not necessary to read the applicable statute verbatim. *Morris* v. *United States*, 156 F. 2d 525, 531 (C. A. 9th); *Wilton* v.

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[8] *United States* v. *Capitol Meats*, 166 F. 2d 537, 539, certiorari denied, 334 U.S. 812; *United States* v. *Center Veal & Beef Co.*, 162 F. 2d 766, 771.

[9] *Morris* v. *United States*, 156 F. 2d 525, 527-532 (C.A. 9th); *United States* v. *Pincourt*, 159 F. 2d 917, 918-920 (C.A. 3d); *United States* v. *Noble*, 155 F. 2d 315, 316-318 (C.A. 3d); *United States* v. *Levy*, 153 F. 2d 995, 998-999 (C.A. 3d).

United States, 156 F. 2d 433, 436 (C. A. 9th); and see the passage from *United States* v. *Pincourt*, 159 F. 2d 917, 919 (C. A. 3d), quoted by petitioners (Pet. 27, fn. 4).

The essential elements of the offense alleged in this case are three: (1) an additional tax owing; (2) an attempt to evade payment of that tax; and (3) wilfulness. See *Spies* v. *United States*, 317 U. S. 492, 497-499. All of these elements were explained to the jury during the course of the instruction. At the outset the judge read the various counts of the indictment, which embodied the language of the applicable statute, and stated the amounts of income taxes allegedly evaded. (R. 205-206.) After outlining the factual issues raised by both the defense and the prosecution and describing the nature of circumstantial evidence (R. 208-212), the judge said (R. 212-213):

> The issue in this case is whether or not these defendants filed those income tax returns, reporting the income on those returns and the tax computed from it, knowingly and wilfully not including gross receipts from the business which the Government claims they earned, and which the Government claims they didn't report.

Thereafter, the judge explained the element of wilfullness required to constitute a criminal attempt to defeat and evade income taxes, explained that some additional tax must be found to be due, and explained that petitioners could not be convicted

Miles case. In addition, the objection to the definition of reasonable doubt in the trial court was based upon an entirely different argument. (R. 221-222.) The present contention is without substance.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

MARION L. HOLLAND AND ETHEL E. HOLLAND,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Court of Appeals (R. 341–352) is reported at 209 F. 2d 516.

JURISDICTION

The judgments of the Court of Appeals were entered on January 21, 1954. (R. 352.) A petition for rehearing, filed on January 29, 1954 (R. 355–373), was denied on February 5, 1954 (R. 374). By order of Mr. Justice Clark dated March 3, 1954, the time for filing a petition for a writ of certiorari was extended to and including

March 22, 1954. The petition for a writ of certiorari was filed on March 22, 1954, and granted on June 7, 1954 (R. 352). The jurisdiction of this Court rests upon 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

The petitioners were convicted of wilfully attempting to evade their income tax for the year 1948. The Government's proof of unreported net income was based upon evidence of a source of taxable income in excess of that reported and proof that the sum of increases in the petitioners' net worth and nondeductible expenditures made by them was substantially in excess of their reported net income. The questions presented are:

1. Whether a failure to show any specific inaccuracy in the petitioners' books precluded resort to a net worth-expenditures computation to prove that the petitioners had wilfully attempted to evade their taxes by failing to record and report a substantial amount of taxable income.

2. Whether the evidence was sufficient to sustain the jury's verdict.

3. Whether the trial court's instructions on the Government's burden of proof were improper.

4. Whether the trial court properly explained to the jury the nature of circumstantial evidence, and whether it was required to give a specific instruction, in addition to the usual instruction on reasonable doubt, that the petitioners should

be acquitted if the circumstantial evidence was not such as to exclude every reasonable hypothesis except that of guilt.

5. Whether the trial court's instructions adequately explained to the jury the essential elements of the offense charged.

STATUTES AND REGULATIONS INVOLVED

Internal Revenue Code of 1939:

> SEC. 41. GENERAL RULE.
>
> The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. * * *
>
> (26 U. S. C. 1952 ed., Sec. 41.)
>
> SEC. 42. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.
>
> (a) [as amended by Section 114 of the Revenue Act of 1941, c. 412, 55 Stat. 687]

General Rule.—The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. * * *

(26 U. S. C. 1952 ed., Sec. 42.)

SEC. 43. PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

The deductions and credits (other than the corporation dividends paid credit provided in section 27) provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. * * *

(26 U. S. C. 1952 ed., Sec. 43.)

SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

* * * * *

(26 U. S. C. 1952 ed., Sec. 54.)

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1952 ed., Sec. 145.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

SEC. 29.41–1. *Computation of Net Income.*—* * * The time as of which any item of gross income or any deduction is to be accounted for must be determined in the light of the fundamental rule that the computation shall be made in such a manner as clearly reflects the taxpayer's income. If the method of accounting regularly employed by him in keeping his books clearly reflects his income, it is to be fol-

lowed with respect to the time as of which items of gross income and deductions are to be accounted for. * * *

* * * * *

SEC. 29.54-1. *Records and Income Tax Forms.*—Every person subject to the tax, except persons whose gross income (1) consists solely of salary, wages, or similar compensation for personal services rendered, or (2) arises solely from the business of growing and selling products of the soil, shall, for the purpose of enabling the Commissioner to determine the correct amount of income subject to the tax, keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of the gross income and the deductions, credits, and other matters required to be shown in any return under chapter 1. * * *

STATEMENT

On May 12, 1952, a three-count indictment was filed in the United States District Court for the District of Colorado, charging violations of Section 145 (b) of the Internal Revenue Code. The first and second counts charged that the petitioner Marion L. Holland had attempted to evade income taxes for the years 1946 and 1947 by underreporting his net income in the amounts of $23,134.10 and $28,914.40, respectively.[1] The third count

[1] The case was consolidated for trial with another in which a two-count indictment charged that the petitioner Ethel E. Holland had aided and abetted Marion L. Holland in such

alleged that both petitioners, Marion L. and Ethel E. Holland (husband and wife), had attempted to evade and defeat income tax due and owing by them for the year 1948 by underreporting their net income for that year in the amount of $19,736.74. (R. 7–9.) Upon arraignment, the petitioners pleaded not guilty. (R. 9.) They were tried by a jury which found both petitioners guilty on Count 3 (involving the year 1948) and the petitioner Marion L. Holland not guilty on Counts 1 and 2 (involving the years 1946 and 1947). (R. 12.) Judgments of conviction were entered on April 22, 1953; the petitioner Marion L. Holland was sentenced to imprisonment for two years and fined $10,000, and the petitioner Ethel E. Holland was fined $5,000. (R. 12–13.) The judgments were affirmed unanimously by the United States Court of Appeals for the Tenth Circuit. (R. 341–351.)

To prove its case, the Government undertook to show (1) that petitioners had acquired a hotel early in 1946, the first year covered by the indictment, and that the profits from this source had greatly exceeded those petitioners reported; (2) that petitioners' net worth during the indictment period had increased annually by an amount much

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attempted evasion of income taxes for the years 1946 and 1947. (R. 10–11.) The petitioner Ethel E. Holland was acquitted on both counts of that indictment, as was Marion on the two counts of the present indictment covering the same years. (R. 12.)

larger than the amount they had reported as income; and (3) that the increases in net worth, falsely represented by petitioners as reflecting only a prior accumulation of undeposited cash kept in suitcases and similar receptacles, could reasonably be attributed only to unreported taxable income. The details of this proof may be summarized as follows:

I. THE SOURCE OF UNREPORTED INCOME

The evidence showed that in 1946 a profitable hotel, bar and restaurant business was acquired by the Hollands and that, although in 1947—according to Mr. Holland's own statement to the former owner—the business and its earnings had substantially increased, the Hollands nevertheless reported much less annual income from the business than it had been earning.

For some time prior to April 1, 1946, Mr. Holland, assisted by Mrs. Holland, was employed by Leonard DeLue as chef at the La Ray Hotel (later called the Holland House) in Golden, Colorado. (R. 33–34.) For these services Mr. Holland received 25% of the net profit from the restaurant business, which comprised about two-thirds of the business of the combined hotel, bar and restaurant operation. (R. 34, 38.)[7] As

[7] Though he worked under the same arrangement with DeLue from January to April 1, 1946, when the Hollands took over the hotel, Mr. Holland reported none of the income realized for this work in his return for 1946 (R. 233).

salary for a period of approximately six months in 1945 (May 20–November 15), Mr. Holland received $4,221.42 (R. 39, 291), which would indicate a total profit from the entire business of $25,300, or approximately $4,220 per month.[3]

On April 1, 1946, Mr. Holland purchased the hotel, including the restaurant and bar, and took over their operation. (R. 34.) At the trial Mr. DeLue, the former owner, testified that his net income from the business for the first three months of 1946 was $11,230.17, an average of approximately $3,743 per month. (R. 36.) Mr. DeLue further testified that in February 1947,[4] Mr. Holland told him that the business had doubled and had already netted $50,000, the amount Holland had originally offered to pay DeLue for a one-half interest. (R. 35.)

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[3] On the basis of Mr. Holland's receipts on his 25% arrangement, the net restaurant profits were $16,885. This figure was about two-thirds of the profits of the business as a whole, which would place the total profits at about $25,300 for the six-month period.

[4] Mr. DeLue also testified that due to the opening of another bar in the vicinity some time around July 1946, the bar business decreased, but that, as previously mentioned, the income from this source had represented only about one-third of the total income from the combined hotel, bar and restaurant operation. (R. 38, 40.) See also the sample daily cash report for February 1953. (R. 354.) In a formal interview during the investigation of the Hollands' income tax liability, Mr. Holland stated in effect that the business went down for a while in 1946 and then picked up, and that he thought, although he did not know, that it was in 1947 that it picked up. (R. 329.)

In their income tax returns for the years 1946, 1947 and 1948,[3] the Hollands reported net profits from the hotel, bar and restaurant business in the amounts of $4,196.82, $5,407.86 and $11,885.45, respectively, an average of approximately $466 per month for the last nine months of 1946, $450 per month for 1947, and $990 per month for 1948. (R. 235, 243, 253.) This was approximately 12½% for 1946, 12% for 1947, and 26% for 1948 of the net profits which Mr. DeLue testified he had previously realized from the same source.

The books of the hotel business were kept by an accountant, Dwight Dulaigh, from data furnished him at monthly intervals by the Hollands. (R. 152, 153.) These data, prepared by Mrs. Holland, consisted of daily figures for cash receipts and cash disbursements, together with evidence of business expenditures in the form of receipted bills and check stubs. (R. 153, 154.) No record was kept of amounts withdrawn by the Hollands for personal and living expenses, and, after preparing the daily figures, Mrs. Holland destroyed the cash register tapes. (R. 75, 78, 313, 324, 325.) At the trial Mr. Dulaigh testified that he accepted what Mr. and Mrs. Holland told him and that he

[3] Individual returns were filed by Mr. Holland (with Mrs. Holland shown as a dependent) for the years 1946 and 1947; a joint return was filed by Mr. and Mrs. Holland for the year 1948. (R. 233, 241, 251.)

did not have any check on the authenticity of the figures.[6] (R. 155.)

The Government's agents were similarly unable to check directly the accuracy of the figures underlying the returns, which showed the earnings of the hotel after the Hollands' acquisition to be only one-eighth to one-quarter as much as they had been immediately before. Accordingly, the investigators proceeded to reconstruct the Hollands' net income by establishing the annual increases in their net worth plus their nondeductible expenditures for each year.

II. THE NET WORTH INCREASES AND PETITIONERS' FALSE EXPLANATION

The Government's proof of the large annual increases in petitioners' wealth is summarized in tabular form, with supporting record references for each item, in the Appendix, *infra*, pp. 89–91.[7]

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[6] In an interview during the investigation of his income tax liability Mr. Holland told the investigating officers that Mr. Dulaigh did not know anything about his affairs except what the books showed, and requested that the officers discuss things not on the books with him, Mr. Holland, personally. (R. 81, 335.)

[7] Though it is not reproduced in the record, a chart identical in all substantial respects with the one in the Appendix to this brief was used by the prosecutor in summarizing the evidence for the jury (cf. R. 199–203). As we do, petitioners refer (Br. 6–7) to the figures used in this summation and shown in our Appendix. The Government attempted to present the same computations based on the evidence through an expert witness; sustaining a defense objection to this effort,

Beginning with a net worth of $19,152.59 at the end of 1945, the evidence showed annual increases in net worth plus nondeductible expenditures totaling (after deducting items of nontaxable income) $46,442.50 for 1946, $33,790.25 for 1947, and $32,047.16 for 1948.* In contrast with these figures, petitioners had reported as their net income $15,336.93 for 1946 (R. 235–A), $5,717.57 for 1947 (R. 247), and $10,211.42 for 1948 (R. 257). In other words, their undisputed acquisitions and

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the trial court told the prosecutor he could state these results in his arguments to the jury (R. 161–169), and this was the procedure ultimately followed.

* Analysis of the annual sums of net worth increase and nondeductible expenditures reveals a significant relationship between these sums, the income petitioners reported from their hotel business, and the income the hotel had earned just prior to petitioners' acquisition of it. Eliminating from petitioners' annual acquisitions of wealth the effect of the income or loss the Hollands reported from sources other than the hotel, bar and restaurant business—i. e., income from other sources of $11,640.11 in 1946 (R. 235), similar income of $809.71 in 1947 (R. 243), and a loss from such other sources of $674.03 in 1948 (R. 253)—the sums remaining are $34,802.39 for 1946, $32,980.54 for 1947, and $32,721.19 for 1948. Stated as monthly averages, these sums would represent $3,866 per month for the last nine months of 1946, $2,748 per month for 1947, and $2,726 per month for 1948. And these last figures, stated as a percentage of the income the former owner had realized from the hotel, restaurant, and bar business, would be 103% of that income for 1946, 73% for 1947, and 73% for 1948. As noted above, on the other hand, the income petitioners reported for the same business was 12½% for 1946, 12% for 1947, and 26% for 1948 of that the business had produced before they acquired it.

expenditures for the three-year period exceeded by $81,000 the total of their reported net income.

As petitioners acknowledge (Br. 45), there is no dispute as to the large total of acquisitions and expenditures they were proved to have made for the years 1946, 1947, and 1948. The critical question posed by their explanations before indictment and contested at their trial was whether these sums, alleged to show unreported income, were actually brought forth from a store of $113,000 in undeposited currency practically all of which had been accumulated long before the prosecution years. Briefly stated, the question was whether petitioners' net worth at the starting point of the computations had been established with substantial accuracy. The remainder of this Statement concerns largely the evidence bearing on this issue.

A. PETITIONERS' STATEMENTS

Called as a witness for the Government, Special Agent Bodley testified to conversations with the Hollands on three different occasions during the investigation of their income tax returns—informal interviews with Mr. Holland on September 14 and September 20, 1949, and formal interviews with both Mr. and Mrs. Holland on October 25, 1949, when their statements were transcribed and signed and sworn by them. During cross-examination of Bodley, the reporter's transcript of the formal statements on October

25, 1949, and Bodley's memorandum of the interview on September 14, 1949, were introduced in evidence as defendants' exhibits. (R. 69–84, 87–88, 97, 300–333, 334–335.)

At the interview on September 20, 1949, Mr. Holland told the investigating officers that his assets just prior to the purchase of the hotel on April 1, 1946, totalled $158,000, consisting of three items—$104,000 in currency which he had amassed prior to December 22, 1933, $9,000 which he and his wife had saved between 1933 and 1946, and $45,000 which he had derived from the sale of stocks early in 1946 (R. 82). At the formal interview on October 25, 1949, Mr. Holland gave a similar account of his financial affairs. After being advised of his constitutional rights and that anything he said might be used against him, he stated under oath that his assets as of January 1, 1946, the starting point of the Government's net worth computation, amounted to $157,000. Again, he said that $104,000 of this was undeposited currency saved prior to December 22, 1933, $9,000 was undeposited currency saved between 1933 and 1946, and the remainder represented cash realized from the sale of stocks before the purchase of the hotel. (R. 70–73, 300, 301–303, 306.) Similarly, Mrs. Holland stated that they had accumulated $104,000 in currency by 1933 and that the hoard was augmented between 1933 and 1946, though she was unable to state the amount of this increase (R. 79, 328–330).

According to the Hollands' statements, their accumulation of undeposited cash, reaching $104,000 by 1933 and $113,000 by 1946, had been begun by Mr. Holland some time before 1917. During the intervening years, he said, it was kept at different times in various receptacles—in a safe deposit box, in a metal box, in a suitcase, in a canvas bag. Mr. Holland said it was left at home (in Denver) while he was away working in Seattle, that it was in "various places" while he was away working in Casper, Wyoming, that he and his wife had it with them while they lived in a rented room in Billings, Montana, and that they also kept it with them (in a suitcase) while they were later living in various hotels in Denver. (R. 82–83, 84, 302, 308–310.) See pp. 19–20, *infra*.

Mr. Holland further stated that in 1946 (the first indictment year), when he purchased the hotel, he began to draw upon the theretofore untouched hoard of currency. He said that by the end of 1948, the last of the prosecution years, the sum had been reduced to $30,000, the remaining $83,000 having been consumed for the expenditures and acquisitions later established for the 1946–1948 period by the Government's proof. (R. 84, 305–306, 310, 311, 334.) This figure of $83,000, if truthfully derived, explained precisely the $81,000 by which the Hollands' expenditures from 1946 through 1948 had exceeded their reported income. *Supra*, pp. 12–13.

As noted above, the only other assets Mr. Holland claimed to have had on January 1, 1946, were stocks worth about $45,000. When asked whether he had sold all of these stocks before purchasing the hotel in April of 1946, he said "Yes," then added, "I'd like to correct that to I don't know. I'm not sure." Immediately thereafter, however, he stated that he owned no securities as of that time (October 25, 1949) and had owned none for the preceding two or three years, not having "fooled with the stock market" since his acquisition of the hotel business. (R. 302.)

B. THE EVIDENCE DISCLOSED BY FURTHER INVESTIGATION

Mr. Holland's tax return for 1946 reported his sale in February 1946 for about $50,000 of stocks which had had a cost to him of $29,650 (R. 239). Having checked all Denver brokerage houses on Holland's stock purchases and sales, Agent Bodley testified that Holland had on January 1, 1946, stocks costing $26,000 or $27,000 (R. 95–96). An official of the bank with which Holland had for some years placed his stocks as collateral for loans testified that all such collateral was withdrawn before April of 1946 and that subsequent loans were secured by other types of assets (R. 29–30). And petitioner's tax returns, which reported dividends and interest for the years 1944 and 1945, reported no dividends thereafter (R. 233, 241, 251, 287, 291). These items of evidence coincided closely with Holland's

statements as to his stock holdings on January 1, 1946 (*supra*, pp. 14, 16).[9]

Similarly, Holland's statement that he had only one liability on January 1, 1946, a debt owed the United States National Bank of Denver (R. 303), was substantially confirmed by the independent evidence. An officer of that bank testified that Holland owed it $11,703.84 at the end of 1945 (R. 26), and the only other liabilities proved by the independent evidence for this date totalled about $950 (R. 102, 112, 139, Appendix, *infra*, p. 90).

There remained the crucial statements as to the $113,000 in undeposited currency which, if truthful, explained the net worth increases for the years 1946 through 1948. The Government undertook to prove that these statements were false by (1) evidence of petitioners' financial history culminating in business failure and unpaid obligations in 1933, (2) evidence of petitioners' limited earnings from 1933 to 1946, (3) evidence of their income tax reporting history, and (4) evidence of the nature of their expenditures after acquiring the hotel, tending to show a current source of income rather than a prior accumulation of cash.

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[9] Listing several thousand shares of stock (Br. 9), petitioners speak of these as representing security for Holland's loans at the end of 1945. The evidence, including that to which they refer, however (R. 26-30), shows that the pledges in question, dating back to 1942, were periodically changed; Holland was buying *and selling* the various stocks on margin

1. *Events culminating in business failure in 1933.*—Mr. Holland started in the restaurant business in Denver in 1921. Two years later he moved to another location. In 1926 he incorporated the business as the Holland Cafe Company, thereafter reincorporating, first as The Pine Grove Cafe Company, and later as The Rocky Mountain Restaurant Company. Mr. Holland said that when his obligations became too great or the suits against him too numerous in the period prior to 1933, he formed new corporations to get a new start.[10] (R. 75, 314–315, 316.) His correspondence with creditors in 1928 and 1929 confirmed his financial difficulty (R. 267–270), a letter to one creditor who had apparently threatened suit stating (R. 270):

> My loss will be even greater when you start this suit. It will be a complete loss for me. It means my $60,000.00 capital investment which is everything I have in the world.

In December 1933, the Hollands suffered a business failure and abandoned their restaurant business to creditors. (R. 75, 76, 315, 316.)

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[10] Mr. Holland stated that he owned all the stock of such corporations except directors' qualifying shares and that he controlled the corporations as completely as he had controlled his individual business. (R. 75, 315.) He further stated that with the exception of a dairy bill, no payment on debts for which the corporations were liable was made subsequent to 1933. (R. 303.)

In 1937 or 1938, while working in Casper, Wyoming, Mr. Holland, using the name "Francis Monroe" to avoid creditors, had an account and safe deposit box with the Wyoming National Bank from which he borrowed money to buy stock on margin. At that time Mr. Holland told the cashier of the bank that he had gone broke in the restaurant business in Denver; that he had very little money and some debts remaining from the business; and that he would like to attempt some business ventures but did not have the money to do so. (R. 127.)

Furniture which the Hollands purchased on the installment plan in 1933, when they later asserted they had over $100,000 in undeposited cash, was repossessed in December of that year with an unpaid balance of $92.20. (R. 103–104.) The Hollands had an unpaid dairy bill dating from 1933 on which they made a compromise payment in 1946. (R. 105, 303, 311.) A judgment of $506.66 against Holland for delinquent business rent for the year 1930 remained unpaid until 1950. (R. 112, 139.)

2. *Earnings and work history, 1933–1946.*— After abandoning his restaurant business in Denver, Colorado, in 1933, Mr. Holland sold vacuum cleaners for about six months. In 1934 he went to Casper, Wyoming, where he worked at the Townsend Hotel for seven years at a salary of $175 per month; his wife and son remained in

Denver during these seven years because it was to their "economical advantage to remain under those conditions." During this period Mrs. Holland worked (for approximately $2,000 per annum) and maintained a home for herself and the Hollands' son with her niece, who carried half the expense of the house. In 1941, Mr. Holland returned to Denver and worked as chef at the Golden Lantern restaurant for about five or six months. He then went to Orange, Texas, where he worked as chef or steward at the shipyards for a short time. In 1942 he went to Billings, Montana, where he worked as manager, chef or steward at a restaurant until April 1945. He then returned to Denver, and, after living at several different places, went to work at the La Ray Hotel in Golden, Colorado, on May 1, 1945, where he worked until November 15 of that year. He returned to the La Ray Hotel early in 1946, and worked there until he purchased the hotel on April 1, 1946. (R. 75–76, 78, 317–319, 327.) During the period 1937–1939 and in 1941, Mr. Holland obtained a number of small loans ranging from $200 to $2,000. (R. 102, 130–131.)

3. *Income tax records.*—During the investigation of his income tax liability, Mr. Holland stated under oath that the $104,000, which he allegedly had on hand in December 1933, represented his savings, mostly accumulated through the twenties; that he had paid the tax on it; that he started fil-

ing income tax returns in 1921; and that all of his returns had been filed in Colorado, Wyoming or Montana. (R. 308, 313.)

However, the official records of the District Director of Internal Revenue for the State of Colorado showed no income taxes paid by the Hollands from 1913 to 1940, inclusive, and that nontaxable returns only were filed for the years 1920, 1921 and 1926. Those records also showed no income taxes paid by the Holland Cafe, Pine Grove Cafe and Rocky Mountain Restaurant Company for the years 1926 through 1934, inclusive, and that nontaxable returns only were filed for 1926–1930, 1931 and 1932. (R. 271, 273, 275, 277, 279.) The official records of the District Director of Internal Revenue for the State of Wyoming showed the amount of income taxes paid by the Hollands from 1933 to 1941 to be: $22.26, including interest and penalties, for 1935; $31.48, including interest and penalties, for 1936; $30.44 for 1938; $26.64 for 1939; and $46.59 for 1940. (R. 281, 283, 285.) The official records of the District Director of Internal Revenue for the State of Montana showed payment of income taxes by the Hollands in the amount of $874.06 for 1944 and $1,360.67 for 1945. (R. 287, 291.)

4. *Nature of expenditures, 1946–1948.*—It was not until after the Hollands acquired the hotel in April, 1946, that they allegedly began to spend the undeposited cash fund they claimed to have

kept intact for decades before (R. 71, 79, 81, 82–83, 310).[11]

During the period from the purchase of the hotel in April 1946 through 1948, however, many acquisitions of property and reductions of indebtedness by [illegible] Hollands were characterized by installment payments, indicative of a source of current income rather than a huge reservoir of cash available without the payment of interest. Thus, a coffee shop costing $15,000 was purchased with payments of $5,000 in May 1946, and $10,000 in February 1947 (R. 35); a house costing $10,000 was purchased with payments of $6,000 in October 1946, and $4,000 in March 1947 (R. 46–47); another house and lot costing $7,500 were purchased with payments of $3,500 in May 1947, and $100 per month thereafter (with the exception of $200 in July 1948) until paid in full (R. 63, 67, 155–156); 160 acres of ranch land costing $6,000 were purchased with payments of $2,000 in January 1948, and $4,000 in August 1948 (R. 59, 263, 264); an indebtedness to a bank in the amount of $35,000 was discharged with payments of $2,500 in July 1946, $7,500 in August 1946, $2,500 in February 1947, $2,500 in June 1947, $2,500 in September

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[11] Mr. Holland described the alleged cash fund as being wholly (R. 82–83) or mostly (R. 73, 308–309) in $100 denominations. Persons to whom Mr. Holland made substantial cash payments during the period, however, testified that those payments were mostly in denominations smaller than $100 bills. (R. 47, 50, 51, 55, 64.)

1947, $2,500 in October 1947, and $15,000 in February 1948 (R. 297).

III. THE DEFENSE

In his opening statement to the jury, defense counsel argued at length that the evidence would show an accumulation of undeposited currency by the Hollands exceeding $100,000 by 1933 and growing to about $113,000 by 1946 (Tr. 12–19).[12] The defense stressed this theory on cross-examination of one of the Special Agents to whom the Hollands had made their sworn written statements (R. 84, 86–87, 91, 93–99), introducing these statements as defense exhibits (R. 87, 300–333), and in arguing their motion for acquittal (R. 177) on the ground that the starting point, the "cornerstone of this entire case" (R. 186), had not been adequately established. The petitioners did not take the witness stand, and the defense rested after presenting three character witnesses (R. 193–197).

SUMMARY OF ARGUMENT

I

Prosecutions for attempted tax evasion employing the so-called "net worth" method of proof have been approved by this Court (*United*

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[12] The reference is to the reporter's typewritten transcript which, at our request, has been certified to this Court by the Clerk of the Court of Appeals. The opening statements are not reproduced in the printed record.

States v. *Johnson*, 319 U. S. 503) as well as every Court of Appeals which has considered them. The basic rules of criminal evidence and procedure are as applicable in these cases as in any others. The Government claims no special "assumptions" or "presumptions" to take the place of proof. Nor is there ground for the view, on the other hand, that attempts to evade taxes, unlike other crimes, must be proved not only beyond a reasonable doubt but to a mathematical certainty. *United States* v. *Johnson*, *supra*, at 518; *Hopt* v. *Utah*, 120 U. S. 430, 439–440.

II

No special statutory authorization is required for use of circumstantial evidence to prove criminal guilt. No such authorization is necessary to prove attempted tax evasion by the net worth method.

The fact that there was no direct evidence of specific false statements in petitioners' books was no bar to proof of the crime by showing net worth increases which could reasonably have come only from unreported income. The result of the Government's proof was to show precisely that the books were false in the crucial sense that they understated taxable income. Nor was Section 41 of the 1939 Internal Revenue Code a bar to the net worth method. Section 41, referring to "method[s] of accounting," and authorizing the Commissioner to change such methods where they

do "not clearly reflect the income," is concerned with the taxpayer's "general bookkeeping system" and not with the truth or accuracy of entries in the books. *United States* v. *American Can Co.*, 280 U. S. 412, 419. The net worth method of proof may be employed no matter what "general bookkeeping system" the taxpayer follows, and entails no "change" in the system. The taxpayer's method of accounting may be perfectly appropriate as a method and not subject to change by the Commissioner; the question remains whether, though using a proper method, the taxpayer has made false entries in his books and false tax returns. Undertaking to answer this question, the net worth method of proof need not be preceded by an irrelevant showing that the defendant's "method of accounting" is inadequate.

III

The jury's verdict, sustained by two courts, was wholly justified by the evidence. It was proved that petitioners acquired a hotel early in 1946 which had been producing earnings far larger than those they reported; that petitioner Marion Holland, contrary to his tax returns, said these earnings increased rather than declined after their purchase; that petitioners' acquisitions of assets and other expenditures from 1946 through 1948 exceeded by huge amounts their reported income; that the discrepancy was remarkably similar to the difference between the hotel earnings they re-

ported and the earnings the former owner had realized.

Petitioners attempted to explain their wealth after 1946 by a story, on its face a test of credulity, that they had for decades had a hoard of undeposited cash amounting to $104,000 by 1933 and $113,000 by 1946. The story was proved to be false.

On the detailed evidence sketched briefly here, there was an overwhelming showing from which reasonable men could surely have been convinced beyond a reasonable doubt that petitioners had wilfully attempted to evade taxes by underreporting their taxable income. Petitioners' attacks on the verdict amount only to assertions that they could conceivably have been innocent. Such assertions fall far short of supporting their claim that the issue should not have been submitted to the jury.

IV

The instructions of which petitioners complain present no basis for reversal.

A. 1. The instruction petitioners requested on the requirements of proof by the net worth method was erroneous in at least three respects and was properly refused. The instructions actually given on this problem were wholly adequate. The trial court stated the elements of the offense, the presumption of innocence, and the Government's burden of proof beyond a reason-

able doubt. In addition, the court explained at length the nature of net worth proof and of circumstantial evidence in general. As the court below observed, these instructions presented the problem to the jury with "commendable clarity" (R. 351).

2. There is no basis for the contention, not raised by objection in the trial court, that the discussion of petitioners' cash board explanation narrowed the case to this single issue and shifted the burden of proof. In fact, this issue was central at the trial, on the theory of the defense as well as the prosecution. It was necessary and proper, therefore, to define the issue carefully. Cf. *United States* v. *Johnson, supra,* at 516. Nevertheless, all other possible issues were covered, the elements of the offense were fully stated, and the fact that the burden of proof was wholly on the Government was emphasized throughout.

3. Similarly not raised in the trial court, petitioners' objection to the instruction defining "reasonable doubt" is not meritorious. There is no formula for such a definition; the jury may be told generally that a reasonable doubt should be one with a rational basis rather than one grounded merely in whim or speculation. The instructions here met the test. The subtle distinction petitioners propose between what the trial court said and what they believe he should have said (but cf. *Dunlop* v. *United States,* 165

U. S. 486, 499–500) was not apparent to their counsel in the trial court when objection could and should have been made. The trial court's failure to adhere to this distinction could hardly have prejudiced their case before the jury.

B. The instructions on circumstantial evidence were proper. They followed the great weight of authority in the federal courts. See, *e. g.*, Learned Hand, J., in *United States* v. *Becker*, 62 F. 2d 1007, 1010 (C. A. 2). Having explained fully the character of circumstantial evidence, the presumption of innocence, and the necessity for proof beyond a reasonable doubt, the trial judge was not required to add the redundant charge that, because the proof was circumstantial, it had to exclude any reasonable hypothesis of innocence.

C. The trial judge was not required to read to the jury the statute under which the offense was charged. It was sufficient that he stated both the issues determining guilt or innocence and the elements of the offense.

ARGUMENT

I

INTRODUCTORY

This is one of four cases in which the Court has granted review of questions arising from convictions for wilful attempts to evade taxes

where the Government's proof has consisted of circumstantial evidence centering on the defendants' annual increases in net worth and other expenditures.[13] As we have noted elsewhere (see Briefs for the United States in *Friedberg* v. *United States*, No. 18, pp. 22–24, and in *United States* v. *Calderon*, No. 25, pp. 16–17), the nature of the crime in such cases—invariably comprised of fraud, concealment, and distortion—commonly makes impossible direct proof of the transactions giving rise to the alleged unreported income and attempt to evade tax.[14] It has frequently been necessary, therefore, to proceed by (1) showing annual expenditures by the defendant (reflected in increases in net worth or established by other proof of dispositions of wealth) far in excess of reported income and (2) proving in addition that these expenditures represent beyond a reasonable doubt unreported taxable income rather than non-

[13] In this case, as in *Friedberg* v. *United States*, No. 18, and *Smith* v. *United States*, No. 52, the convictions were affirmed by the Courts of Appeals (for the Sixth and First Circuits, respectively), and certiorari has been granted on petitions by the defendants. In *United States* v. *Calderon*, No. 25, the conviction was reversed by the Court of Appeals for the Ninth Circuit, and certiorari has been granted on the Government's petition.

[14] For example, out of 708 such cases referred to the Department of Justice for prosecution in the three-month period ending March 15, 1953, slightly more than half were believed to warrant prosecution on the basis of circumstantial evidence rather than direct evidence of specific items of unreported income.

taxable receipts or prior accumulations. The general propriety of such proof, however sufficient or insufficient may be the particular evidence in any particular case, has been affirmed by this Court (*United States* v. *Johnson*, 319 U. S. 503) and by numerous decisions of the Courts of Appeals.[15]

In one sense, however, it is perhaps unfortunate that such cases, though they admittedly present factual problems of a special nature, have been tagged with a special label, as "net worth" cases. The result—reflected, we think, in the cases now before the Court—has been attempts by defendants to single out these prosecutions and apply to them peculiar rules which have no application in other criminal prosecutions. It is urged in the instant case, for example (Pet. Br. 16), that there is no "specific statutory basis * * * for the use of the so-called net worth expenditures method of computing income." Petitioners argue from this that the kind of circumstantial evidence employed against them could not be used; but there is, of course, no general rule of criminal law requiring statutory authority for a particular form of evidence, provided only that it be relevant and otherwise competent.

Similarly, there runs through the claims of defendants in these cases an unspoken assumption that in proving unreported income as the source

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[15] See cases collected in our briefs in *Friedberg* (pp. 22-23) and *Calderon* (pp. 17-18, fn. 5).

of net worth increases, the Government is obliged to negate beyond the possibility of speculation any other conceivable source. But proof to a mathematical certainty is nowhere required in the criminal law, and it is not required to establish tax evasion. *United States* v. *Johnson, supra,* at 518. Petitioners misstate the Government's position when they suggest (Br. 23, 24, 25) (1) that we rely "upon net worth computations as the *sole proof* in a tax evasion prosecution", (2) that the Government "commonly *assumes* the nonexistence of all assets except those which are visible to its investigators," (3) that the Government "[predicates] a starting point upon assumption," (4) that "the burden is shifted to the taxpayer to prove that he did not in fact understate his taxable income", and (5) that it is "the Government's position that increases in net worth must be *assumed* to be attributable to currently taxable income, unless the taxpayer demonstrates the contrary." (Emphasis added.) Underlying these general charges, we think, is the premise that unless the Government's proof leaves no room for the ingenuity of counsel to suggest possible inferences other than those the jury drew, the evidence is insufficient to sustain a verdict of guilty. Cf. *Hopt* v. *Utah,* 120 U. S. 430, 439–440. We propose to show in this case (*infra,* pp. 40–67) that, apart from this erroneous premise, petitioners' attacks upon the verdict are un-

substantial. What we emphasize in this general introductory statement is that the standards by which such attacks are to be judged are the settled standards of the criminal law.

We also emphasize that the Government makes no claim that "assumption" may take the place of proof. If in a particular case the Government's proof fails, the case should not go to the jury. If only "assumptions" underlie a jury's verdict, the verdict must not stand. We urge only that no unfounded assumptions inhere in the nature of so-called "net worth" cases any more than in other kinds of criminal prosecutions. And we argue specifically here that convincing inferences reasonably drawn from the evidence by a jury, and approved by two courts, are not to be rejected as "assumptions" because counsel for the defense failed to persuade that other inferences were warranted by the evidence.

II

THE USE OF THE "NET WORTH" METHOD OF PROOF WAS PROPER

Acknowledging that they made no such argument in either of the courts below (Br. 22, fn. 4), petitioners contend that the Government could not rely upon a showing of net worth increases in this case in proving that they had wilfully attempted to evade taxes (Br. 14–22). This is so, they argue, because no specific error or misstate-

ment was shown in their books and records (Br. 15–16) and because Section 41 of the 1939 Internal Revenue Code (*supra*, p. 3) requires the Commissioner to adhere to the taxpayer's "method of accounting" unless this method "does not clearly reflect the income * * *." The argument—in the course of which petitioners intermingle and confuse bookkeeping accuracy, methods of accounting, and the nature of circumstantial evidence—is clearly without merit.

It should be observed at the outset that this argument has nothing to do with the *sufficiency* of the Government's proof, a matter considered separately both in petitioners' brief (pp. 22–47) and here (*infra*, pp. 40-67). What they assert, rather, is that the type of circumstantial evidence the Government adduced, however powerful, could not be used at all without first showing either a specific error or false statement in their books or some failure of their "method of accounting" to reflect income clearly. We may assume, therefore, for purposes of this point, that the evidence was beyond question sufficient to show annual net worth increases far in excess of reported income and to show that the excess resulted from unreported taxable income. Putting the question this way, as we think it is fairly put, states at once petitioners' fallacy.

For the whole point of the Government's case was that petitioners' books, on the basis of which

their returns were made, were false. The Government's agents were unable to determine directly the specific false statements in petitioners' books; no more could their accountant, who kept their books and made their returns from figures petitioners gave him, discover if and when these figures were false. *Supra*, pp. 10–11. It was impossible, for example, to recover the cash register tapes Mrs. Holland destroyed daily (*supra*, p. 10), or to know what sums might have failed to find their way into the cash register, or to learn the amounts petitioners removed from their receipts for personal expenses without making records of such withdrawals (*supra*, p. 10). Nevertheless, what the proof ultimately established was that petitioners had unreported income and that the only reasonable source of such income was the hotel profits which, according to petitioners' returns, fell dramatically following their acquisition of the hotel. *Supra*, pp. 8–10; *infra*, pp. 47–48. To argue that such proof could not be presented without first pointing precisely to the particular false statements in petitioners' books goes beyond the untenable suggestion "that skilful concealment is an invincible barrier to proof." *United States* v. *Johnson*, *supra*, at 518. The argument says in effect that the most obvious, common, and expectable kind of concealment must either be demonstrated by frequently unobtainable direct evidence or else not demonstrated at all.

There is no basis for such a contention. There is no formula in the criminal law which forbids the use of circumstantial evidence without specific statutory authorization.[16] And petitioners err in their belief that such a formula, specially applicable to prosecutions for tax evasion, is to be found in Section 41 of the Internal Revenue Code of 1939.

Section 41 offers a taxpayer, within certain limitations, a choice of annual accounting periods "(fiscal year or calendar year, as the case may be)" and a choice of accounting methods (cash, accrual, completed contract, etc.). The choice of period serves to determine the twelve-month period for which income is to be computed; the choice of method, geared to the nature of the taxpayer's business, determines the point in time as of which specific items of income and deduction are to be computed. See Sections 42 (a) and 43, Internal Revenue Code of 1939, *supra*, pp. 3–4; Section 29.41–1, Treasury Regulations 111, *supra*, pp. 5–6. The provision is designed to accommodate the system of tax computation to the practices and methods of business which fairly determine

[16] Truth may be established just as solidly by circumstantial evidence as by direct. In each case the determination depends, not upon the type of evidence, but upon its convincing quality. *United States* v. *Becker*, 62 F. 2d 1007, 1010 (C. A. 2); *McCoy* v. *United States*, 169 F. 2d 776, 784–786 (C. A. 9), certiorari denied, 335 U. S. 898; 1 Wigmore, *Evidence* (3d ed.), Secs. 25–26; 9 *id.*, Sec. 2497; 2 Wharton, *Criminal Evidence* (11th ed.), Sec. 926.

when and how taxable income is realized."[17] Where the taxpayer chooses an accounting basis which is not suitable for reflecting clearly when his income or deductions are realized—not suitable, that is, even though the taxpayer's books and returns tell no lies—the Commissioner is necessarily empowered to insist upon an appropriate basis. But the important fact remains that "method of accounting" as used in Section 41

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[17] The language of Section 41 is identical with that used in successive Revenue Acts since the Act of 1918, Sec. 212, 40 Stat. 1057, 1064–1065. Similarly, Sections 8 (g) and 13 (d) of the Revenue Act of 1916, 39 Stat. 756, 763, 771, provided that generally an individual or corporation "keeping accounts upon any basis other than that of actual receipts and disbursements" might make returns "upon the basis upon which his [its] accounts are kept, in which case the tax shall be computed upon his [its] income as so returned." In *United States* v. *Anderson*, 269 U. S. 422, 440, this Court explained the purpose of these provisions as follows:

"A consideration of the difficulties involved in the preparation of an income account on a strict basis of receipts and disbursements for a business of any complexity, which had been experienced in the application of the Acts of 1909 and 1913 and which made it necessary to authorize, by departmental regulation, a method of preparing returns not in terms provided for by those statutes, indicates with no uncertainty the purpose of §§ 12 (a) and 13 (d) of the Act of 1916. It was to enable taxpayers to keep their books and make their returns according to scientific accounting principles, by charging against income earned during the taxable period, the expenses incurred in and properly attributable to the process of earning income during that period; and indeed, to require the tax returns to be made on that basis, if the taxpayer failed or was unable to make the return on a strict receipts and disbursements basis."

(or "basis of keeping accounts" as used in corresponding sections of previous revenue acts)—

> refers to the general bookkeeping system followed by the taxpayer *and not to the accuracy or propriety of mere individual items or entries upon the books.* And *to correct an improper item in a return—whether the result of mere error or designed—cannot properly be said to constitute rejection of the basis upon which the return was constructed.* [*United States* v. *American Can Co.*, 280 U. S. 412, 419. Emphasis added.]

Whatever his "method of accounting," a taxpayer has a "net worth" at any given time and makes expenditures from time to time. It calls for no change in his method of accounting to determine at particular points and for particular periods the amount of his net worth, the increases or decreases therein, and the amounts he has spent. And the ultimate purpose of such determinations in a prosecution like the one here is to find whether a crucial improper item (understated taxable income) has appeared in the taxpayer's return—a process which, in the language of the *American Can* case quoted above, "cannot properly be said to constitute rejection of the basis upon which the return was constructed."

To be sure, it may be important in a particular case that there be no departure from the taxpayer's method of accounting in computing his

net worth as of any particular date. Thus, a taxpayer on the accrual basis may realize income at a given point in time which would not be income until a later point in time if he were on the cash basis. It would follow that the taxpayer's net worth would include or exclude the particular item at the particular time depending upon his "method of accounting." But this caution serves only to emphasize that, with any "method of accounting," computations of net worth can be and are made without changing that method. There is no suggestion that, in the only sense which could possibly matter here, there was any departure from petitioners' method of accounting which could have affected the accuracy of the computation of their net worth increases and other expenditures. Indeed, not only is the supposed obstacle of Section 41 presented for the first time in this Court, but petitioners at the same time concede (Br. 45) that, apart from their arguments as to the completeness of the assets shown at the starting point, there was "no dispute as to the fact or amount of subsequent expenditures or acquisitions."

The short of the problem is this: The Commissioner, to whom Section 41 refers and who is not a party to criminal prosecutions, makes no change in a defendant's "method of accounting" when a prosecution for tax evasion proceeds by proving net worth increases derived from unreported in-

come. The taxpayer's method of accounting in such a case may suit his business perfectly, and there may be no justification for changing it. The ultimate fact to be demonstrated is that, employing a method which is ideal *qua* method, the taxpayer has falsely stated the facts. Section 41 has reference, not to methods of proof in criminal cases, but to the various recognized basic "methods of accounting"—*e. g.*, cash, accrual, or installment—used in computing tax liability. Cf. *Healy* v. *Commissioner*, 345 U. S. 278, 281; *Dixie Pine Co.* v. *Commissioner*, 320 U. S. 516, 518–519; *Security Mills Co.* v. *Commissioner*, 321 U. S. 281; *Lucas* v. *American Code Co.*, 280 U. S. 445. Nothing in this Section had the purpose or result of limiting the long recognized and frequently indispensable method of proving net worth increases as part of the proof of underreported taxable income. Accordingly, notwithstanding contrary views expressed principally in dicta to which petitioners refer (Br. 17–21), the Tax Court, whose authority petitioners invoke (Br. 20–21), has recently answered their contention as follows (*Lipsitz* v. *Commissioner*, 21 T. C. 917):

> The net worth method is not a system of accounting; it is not a substitute for either the cash or the accrual basis of accounting or any other recognized method of keeping books. When correctly applied to the facts of a particular situation it is merely evi-

> dence of income. And when the increase in net worth is greater than that reported on a taxpayer's returns or is inconsistent with such books or records as are maintained by him, the net worth method is cogent evidence that there is unreported income or that the books and records are inadequate, inaccurate, or false. It is not correct to say that the use of the net worth method is forbidden where the taxpayer presents books from which income can be computed, for the net worth method itself may provide strong evidence that the books are unreliable.

See also *Potson* v. *Commissioner*, 22 T. C. No. 111.

III

THE VERDICT, SUSTAINED BY BOTH COURTS BELOW, WAS AMPLY SUPPORTED BY THE EVIDENCE

Summarized in broad outline, the evidence showed that on April 1, 1946, the petitioners acquired a hotel, bar, and restaurant business which had been producing greater profits than they reported from it; that, contrary to the decline he reported in his income tax returns, the petitioner Marion L. Holland admitted that the earnings of the business increased after petitioners purchased it; and that during each year of the period 1946–1948 the amounts spent by the petitioners in acquiring assets and making other nondeductible expenditures were substantially in excess of their

reported net income. It was shown that the profits they reported from the hotel business were one-eighth to one-quarter as great as those the former owner had realized. And the evidence established that the excess of their expenditures over their reported income, if added to the profits they showed for their hotel business, would make those profits close to, though still lower than, those the business had produced just prior to their acquisition of it.

Confronted with these discrepancies, petitioners explained them with a story of a hoard of currency amounting to $104,000 by 1933 and $113,000 by 1946—constantly growing over three decades, hauled about in a suitcase or a canvas bag, never invaded (until the commencement of expenditures on a grand scale in 1946) to ease the pinch of poverty or to satisfy even the smallest demands of creditors. In careful detail, this sworn explanation accounted with striking precision for the $81,000 by which their expenditures for 1946 through 1948 had exceeded their reported income. By what the petition for certiorari describes (p. 21) as a "wealth" of evidence, the explanation—which, if true, would have excluded any other—was demonstrated to be false.

Here, the bulk of petitioners' argument (Br. 22–47) is devoted to asserting that the case should not have gone to the jury. Primarily, they maintain (Br. 33–44) that the proof was insufficient

because it did not negate (1) the possibility that the $81,000 by which their expenditures exceeded their reported income for 1946–1948 might be attributable to their having had assets not accounted for at the beginning of 1946 (the starting point), or (2) the possibility that this large sum represented nontaxable receipts during the period. We treat both of these aspects together; both are part of the single question whether underreporting of current taxable income was proved; both are answered by the overwhelming evidence that petitioners' huge expenditures could reasonably be explained only by such income—and not by the cash hoard they claimed or by gifts or inheritances which they did not claim but implicitly excluded by their explanation. Petitioners' remaining arguments on the sufficiency of the evidence—that their admissions were insufficiently corroborated, that wilfulness was not proved, and that their acquittal for 1946 and 1947 somehow impairs their conviction for 1948—are equally without merit. They wholly fail to overcome the "assuring strength" (*Delaney* v. *United States*, 263 U. S. 586, 590) with which the concurrence of both lower courts arms the jury's verdict against them.[18]

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[18] See also, on the test to be applied in determining the sufficiency of the evidence, *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 254; *Glasser* v. *United States*, 315 U. S. 60, 80; *Gorin* v. *United States*, 312 U. S. 19, 32.

A. *There was convincing proof that petitioners had underreported current taxable income in large amounts*

In the net worth-expenditures computation the Government presented to the jury on the basis of the evidence, petitioners were given credit at the starting point, December 31, 1945, for $31,803.09 in assets—including (1) $29,650 representing the cost value, according to petitioners' income tax return for 1946 (R. 239), of stocks they owned at that time and sold prior to their purchase of the hotel on April 1, 1946, and (2) $2,133.09, representing the total balance in their two bank accounts (Appendix, *infra*, p. 89). Deducting from this total undisputed liabilities of $12,650.50, petitioners were shown to have a net worth of $19,152.59. It is also undisputed (Pet. Br. 45) that the net worth and expenditures figures shown for the subsequent years were correct. It followed, if the starting point was accurate, that receipts of some kind during the years 1946 through 1948 would account for some $81,000 realized by petitioners in excess of their reported income ($31,000) for that three-year period.

It is obvious, of course, that the solidity of the proof of starting point can be shaken only if the existence of assets in substantial amounts was insufficiently disproved by the Government. For it must be acknowledged that the investigators could not reach back and trace every penny in petitioners' pockets at some point in the past,

so that proof of attempted tax evasion could never be accomplished by the type of evidence here employed if it were necessary to establish with absolute precision the amount of taxes evaded. But there is no such necessity. See *United States* v. *Johnson, supra.* And the evidence here demonstrated convincingly that petitioners' large expenditures in excess of reported income from 1946 through 1948 did not come from undiscoverable assets in their possession before 1946.[19]

As we have noted (*supra*, pp. 13–16), petitioners made several statements, including written statements under oath, in which they undertook to explain fully their proved affluence after their entry into the hotel business in 1946 by asserting that they had accumulated a secret store of currency amounting to $104,000 by 1933 and $113,000 by 1946. It was wholly reasonable that the Government's investigation—ordinarily depend-

[19] Of course, the limitation we recognize upon the precision of net worth proof is to some extent eliminated by its operation on the ending point as well as starting point. For example, petitioners stated that after their acquisition of the hotel, they kept in their cash registers and safe amounts of cash ranging up to $5,000 (R. 81, 98, 305, 324, 325–326). These amounts would for meticulous precision have to be added to the net worth increases. However, they could not be determined precisely and were omitted altogether from the Government's computations, an omission obviously favorable to petitioners. Similarly, amounts petitioners spent to support themselves—for food, clothing, etc.—would be nondeductible expenditures and would enhance the excess of their expenditures over their reported income. But these, too, were wholly excluded, no attempt being made to estimate them, an additional factor in petitioner's favor.

ent upon the taxpayer's disclosures for at least the initial information upon which to collect taxes and enforce the tax laws (*Spies* v. *United States*, 317 U. S. 492, 495)—should center on this explanation, which would end the case if true and point persuasively to guilt if false. The results of that investigation served at once to prove that petitioners had lied and to show that their wealth in 1946–1948 could not be explained by undiscovered assets in their hands before 1946.

It was proved that, starting in the restaurant business in 1921, the petitioner Marion L. Holland, moving from one location to another, and incorporating and reincorporating when his obligations became too great or the suits against him too numerous, suffered a complete financial failure in December 1933, abandoning his entire business, which he had previously said was all he had, to creditors. It was shown that in 1937 or 1938, Holland told a bank cashier he had gone broke in the restaurant business, that he still had very little money, and that he would like to engage in some business ventures but lacked the funds to do so. In 1933, for an unpaid balance of $92.20, the Hollands had to suffer repossession of furniture they had bought on the installment plan; a compromise payment on a dairy bill dating from 1933 was not made until 1946; and a judgment of $506.66 for business rent remained unsatisfied from 1930 until 1950.

The human mind can grasp the *possibility* that, amid all these evidences of economic collapse, the Hollands were secretly clinging to a box or a bag containing $104,000 in cash, as they later asserted. But this reach of the imagination is no help to the petitioners. Twelve reasonable jurors were surely warranted in concluding beyond a reasonable doubt that there was no such hoard of wealth.

The evidence for the years 1933 to 1946 was equally overwhelming against petitioners. During those years, Mr. Holland moved from place to place, from job to job, at meager salaries, negotiating small bank loans from time to time. For seven of those years, while he worked in a far away city, Mrs. Holland remained in Denver, for reasons of economic advantage, working to provide a home for herself and her son. Neither the petitioners nor their corporations had paid any income taxes from 1913 to 1935; they paid such taxes only in small amounts from 1935 to 1946. The evidence for this later period powerfully confirmed the conclusion that there had been no cash hoard of $104,000 by 1933, and that there was surely no bag containing $113,000 by 1946.

The foregoing evidence, powerfully arguing that petitioners' explanations were false, was in itself cogent evidence of their guilt. *Wilson* v. *United States*, 162 U. S. 613, 620–621; *Andrews* v. *United States*, 157 F. 2d 723, 724 (C. A. 5),

certiorari denied, 330 U. S. 821; *United States* v. *Werner*, 160 F. 2d 438, 441 (C. A. 2); 2 Wigmore, *Evidence* (3d ed.), Sec. 278. But there was still further evidence that petitioners' net worth in fact increased remarkably from 1946 to 1948 and that this was not merely an apparent increase resulting from the disgorging of assets already owned before 1946, or an increase resulting from nontaxable receipts. As we have shown (*supra*, pp. 8–10), there was evidence that just before they acquired it, petitioners' hotel business was earning profits several times as great as those they reported. There was testimony that Mr. Holland had told the former owner the profits had increased after he took over. And it was shown that the difference between the income petitioners reported and the income the former owner had realized correlated strikingly with the difference between their reported income and their admitted net worth increases (and other expenditures) during the years 1946 to 1948 (*supra*, p. 12, fn. 8). To state this point graphically, we show here (1) the prior monthly earnings of the hotel business, (2) the monthly earnings petitioners would have required from this source (after eliminating net profits or losses they reported from other sources) to account for the assets they acquired and the other nondeductible expenditures they made during 1946, 1947, and 1948, and (3) the monthly

income they actually reported from this source (see pp. 8–13, *supra*):

Year	Prior Earnings	Amount of Income Which Would Explain Hollands' Expenditures	Hollands' Reported Income
1945	[1] $4,200		
1946	[2] 3,743	[2] $3,866	[2] $466
1947		2,748	450
1948		2,726	900

[1] Average monthly figure based on period of six months.
[2] Average monthly figure based on period of three months.
[3] Average monthly figure based on period of nine months.

These figures demonstrate vividly that profits as great in 1946 and substantially lower in 1947 and 1948 than the former owner's would fully explain petitioners' net worth increases for these years. The much smaller profits they actually reported stand in dramatic contrast. And this evidence, taken with the palpably false explanations petitioners tendered, added impressive weight to the conclusion that unreported income, not cash on hand at the starting point or current nontaxable receipts, explained their wealth during 1946, 1947, and 1948.

It was shown, finally, that many of petitioners' expenditures to acquire assets or reduce their indebtedness between the time they purchased the hotel and the end of 1948 were characterized by installment payments, indicative of a source of current income rather than a huge reservoir of cash available without the payment of interest. See *Barcott* v. *United States*, 169 F. 2d 929, 931 (C. A. 9), certiorari denied, 336 U. S. 912; *Sasser*

v. *United States*, 208 F. 2d 535, 538 (C. A. 5). Standing alone, this evidence might be relatively slight. Taken together with the other proof, it lent further conviction to the overall showing of petitioners' guilt.

To summarize, the evidence showed (1) undisputed acquisitions and expenditures by the petitioners in excess of their reported income, (2) the limited extent of petitioners' resources at the starting point, (3) the sufficiency of prior earnings of their hotel business—admitted subsequently to have increased rather than declined—to account for the acquisitions and expenditures, (4) a pattern of expenditure indicative of a source in current income, and (5) the falsity of an explanation attempted by petitioners—an explanation which implicitly excluded other conceivable explanations. This evidence, we submit, fully answers petitioners' claim that the Government failed to establish a *prima facie* case. It supported compellingly the jury's finding that petitioners' wealth came from unreported income—not from prior accumulations and not from some unspecified nontaxable source never suggested by petitioners and tacitly excluded by their own statements.

Emphasizing the *possibilities* the evidence could never negate to an absolute certainty, petitioners overlook the overwhelming probability the Government affirmatively proved. They say they

could have had more assets at the starting point than the Government's investigation revealed (Br. 33–37); they might have had gifts or inheritances, they suggest (Br. 43), to account for their net worth increases; and they conclude from these suggestions (Br. 43–44) that "no justification exists for *assuming* that the asserted increases in net worth reflected taxable income, for creating a *presumption* to that effect or for shifting to petitioners the burden of proving that the increases in net worth were attributable to non-taxable sources." (Emphasis added.) But these characterizations of the Government's case fail utterly to diminish the strength of the positive showing we have summarized that petitioners had huge net worth increases, that their attempt to account for these by a cash hoard (not gifts or inheritances) was untruthful, and that there was a current source of taxable income, the earnings of which were evidently understated, which did account for the increases. Starting with a promise to show the Government's failure to make out a *prima facie* case, petitioners end only with an assertion that states of fact consistent with their innocence are imaginable, however extremely improbable. The answer to such a contention is clear.

> Out of the domain of the exact sciences and actual observation there is no absolute certainty. The guilt of the accused, in the majority of criminal cases, must necessarily be deduced from a variety of circum-

> stances leading to proof of the fact. Persons of speculative minds may in almost every such case suggest possibilities of the truth being different from that established by the most convincing proof. The jurors are not to be led away by speculative notions as to such possibilities. [*Hopt.* v. *Utah,* 120 U. S. 430, 439–440.]

The "speculative" and unsubstantial character of petitioners' attacks on the sufficiency of the proof of starting point and current taxable income (Br. 33–44) is readily revealed by reference to the specific details of which they complain. We treat these in the order of petitioners' argument.[20]

1. The general assertion that the starting point was not fixed "with reasonable certainty" (Pet. Br. 33–35) has been sufficiently treated. *Supra,* pp. 40–41, 43–49. Early in this discussion, petitioners quote (Br. 34) the third sentence of the special agent's answer in the following exchange on cross-examination (R. 84–85):

> Q. And during all these interviews that you have testified about, the Hollands were very cooperative weren't they, Mr. Bodley?
>
> A. The Hollands talked to us. The Hollands made their records available. The only question of cooperation which I have in my mind was whether they always told us the truth about their currency, or not.

[20] We omit at this point and deal below (pp. 61–64) with the argument in this portion of petitioners' brief (pp. 37–42) that their admissions were not corroborated.

Emphasizing the last two words "or not"—and finding similar phraseology in *Bryan* v. *United States*, 175 F. 2d 223, 226 (C. A. 5), affirmed on other grounds, 338 U. S. 552—petitioners find it "apparent that the Government failed to sustain the burden of proving the petitioners' net worth starting point with reasonable definiteness." What is more apparent, we submit, is that the quoted testimony, read in context, is only a polite statement that in view of petitioners' stories about their currency, there was a question in the agent's mind as to the extent of their cooperation. Surely, petitioners would have objected with vigor—and with justice—had the agent taken the occasion of this question about their "cooperation" to announce a belief that petitioners had lied to him. The significant point, at any rate, is simply that the sentence petitioners emphasize neither adds to nor subtracts from the wealth of evidence which serves to establish the starting point firmly.

2. It is suggested (Pet. Br. 9–10, 34) that the evidence established petitioner Marion L. Holland's ownership on January 1, 1946, "of hundreds and possibly thousands of shares of stock (R. 29–30, 130–132, 141–142)." But the record, including the portions to which petitioners refer (see also R. 95, 129, 320) shows only that Holland, over the years dating back to 1937 or 1938, was engaged in buying and selling various stocks from

time to time—not, by any means, that he had on hand all the stocks he had ever owned (on margin) on January 1, 1946. On the contrary, petitioner Marion Holland himself stated (*supra*, p. 14) that he owned on January 1, 1946, stocks having a market value of about $45,000. He indicated, though he then said he was not certain, that he had sold all his stocks before purchasing the hotel on January 1, 1946. He acknowledged, further, in October of 1949 that he had not dealt in stocks since acquiring the hotel. His tax return for 1946 showed sales in February of that year of stocks for which he realized about $50,000, having a cost basis to him of $29,650.

The agent who had checked the brokerage houses gave testimony coinciding closely with Holland's statements, stating that Holland's stock on January 1, 1946, had a cost to him of around $26,000 or $27,000. It was shown that, whereas before February of 1946 Holland's bank loans were secured by stock, other assets were given as security thereafter. *Supra*, p. 16. Finally, petitioners reported dividends and interest in their income tax returns for the years 1944 and 1945, while no dividends were reported in the period 1946–1948 (R. 233, 241, 251, 287, 291).

From the foregoing evidence, the jury was certainly entitled to conclude, as the Government urged, that petitioner's 1946 return—coinciding with his statements, the results of the Govern-

ment's investigation, and the other evidence—told the whole story of his stock holdings on January 1, 1946. And the computation the Government proposed showed at cost as of January 1, 1946, the stocks revealed by that return to have been disposed of in February, 1946.[21] The accuracy of this showing was further confirmed by Holland's repeated assurance that cash on hand on January 1, 1946, not stocks, accounted for his affluence thereafter. If the directly pertinent evidence we have summarized could have left any doubt that the Government's computation correctly showed Holland's stock holdings on January 1, 1946, there can be no doubt that there were no stocks approaching in cost the amount necessary to shake the validity of the starting point.[22]

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[21] No question is raised, or could properly be raised, as to the propriety of showing the stocks at cost. At the end of 1946, it will be noted, the gain on the sale of these stocks is shown, excluding from the computation of allegedly unreported income the nontaxable portion of the gain. This makes evident the necessity for showing assets at cost throughout the computation. Otherwise, increments to net worth, unrealized for tax purposes, would distort the demonstration designed to contrast reported income with realized gains not reported (but properly reportable on the prosecution's thesis) as taxable income. Cf. pp. 37–38, *supra*.

[22] Petitioners quote (Br. 34) the special agent's testimony to the effect that Mr. Holland's "greater purchases [of stock] were still on hand in 1946" (R. 95), and refer to this as an "obvious defect" in the Government's proof of the starting point. What they omit is the testimony immediately following (*ibid.*) that these "greater purchases * * * still on hand" had a cost to Holland of $26,000 or $27,000. As we

3. Next, petitioners assert (Br. 35) as "[a]nother critical deficiency" in the Government's case the "failure to negative in any way the *possible existence* of a separate estate for the petitioner Ethel E. Holland." (Emphasis added.) This assertion, made in a single sentence, is briefly answered. The evidence left no doubt that the Hollands' assets were pooled; Ethel E. Holland and her husband both stated that any savings she accumulated were turned over to him and mingled with his savings (R. 79, 82, 302, 327).

4. It is argued, in addition (Pet. Br. 36), that the Government's investigation was deficient because the investigators did not check the truth of petitioner Marion L. Holland's statements that he had turned in gold for cash at the Government's call in 1932 and that he had made profits selling real estate in the twenties. Granting that it would be desirable to track to its conclusion

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have noted, these figures corresponded closely to those in Holland's 1946 return, which in turn conformed closely to Holland's subsequent sworn statements. And these statements were supported by other evidence that Holland divested himself of all his stock holdings early in 1946. All this firmly supported the figure of $29,650 for stocks on hand as of January 1, 1946.

We agree with petitioners that the remarks of the court below on this point (R. 347)—quoting and perhaps misled by the portion of the agent's testimony upon which petitioners rely—would not be an adequate answer if there were any such defect as they assert. But there is, for the solid evidentiary reasons we have summarized, no need to rely on this answer to support the jury's verdict.

every conceivable line of inquiry, the limited and trivial "defects" counsel were able to suggest only testify to the thoroughness of the investigation. Marion Holland's statements about gold and real estate referred to matters before 1932. The first indictment year was 1946. There was overwhelming evidence, including his own contemporaneous statements, that Marion Holland was broke in 1933 and in straitened circumstances for years thereafter.

Moreover, the jurors had before them petitioners' statements and the acknowledgment that the few details now in question had not been checked. For what they were worth, these factual matters were presented for the appraisal of the triers of fact along with all the others. The obvious point about these matters is that the jury could have believed Holland had gold in 1932 [23] and dealt in real estate in the twenties and still have found the evidence conclusively probative of the vital fact that he had nothing like the $113,000 in cash he claimed to have had at the outset of 1946. It is to this point, of course, that petitioners direct their claim "that the Government's

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[23] The amount of this gold, conceding its existence, is a matter of some doubt. In Holland's written statement in the record (R. 309), he merely said he had had "quite a bit of it." Though he was apparently referring to this statement (see R. 86), defense counsel put his questions on this subject variously in terms of "ten or twenty thousand dollars" of gold and then "twelve thousand dollars in gold" (R. 86–87).

investigation was defective." It is plain, we submit, that the asserted defects present no grounds for the argument that the Government's case should not have gone to the jury.

5. The argument (Pet. Br. 36–37) that the extensive evidence of the petitioners' financial history is too speculative and conjectural to be of value brings into sharp focus the effort to show ultimately that tax evasion must be immune against detection and proof by circumstantial evidence. Bizarre on its face (though not, to be sure, impossible), petitioners' story that they carried $104,000 in hidden cash in 1933 and $113,000 in 1946 was obviously not subject to disproof by direct evidence. The investigators could not reach back in time to hunt for the secret boxes and bags and suitcases of which the story told. Now petitioners assert that no trust should be placed in the objective proof, including Marion Holland's statements long before the investigation, that no such hoard could have existed. If the argument were sound, a large number of investigations would begin and end with the taxpayer's bland assurance that he'd had a huge bag of money or a mattress stuffed with cash at some convenient time in the past.

That the argument is unsound is attested by the great number of cases in which evidence of the kind adduced here has served as part of the

refutation of the "cash fund" hypothesis.[24] (There was, it should be recalled, other evidence on this point. Pp. 8–10, 21–23, *supra*. Here, we deal only with the specific attack on the evidence of financial history). It is no answer to say, as petitioners do (Br. 37), that the evidence of their history should have found them penniless at the end of 1945 rather than enjoying the net worth of almost $20,000 the Government showed. Nor is there any inconsistency between the historical events the Government proved and the fact that Holland, after 1933 (R. 95), bought and sold stocks on margin and apparently made some money. Like the history, the evidence of petitioners' net worth at the end of 1945 and of Holland's stock dealings were before the jury. If it was surprising, on all the evidence, that petitioners had amassed a net worth of $20,000 by 1946, it was incredible that they should have had in addition a bag of $113,000 in cash. The jury so found. Its finding is unassailable.

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[24] *E. g., Smith* v. *United States*, 210 F. 2d 496, 500 (C. A. 1), certiorari granted, 347 U. S. 1010, No. 52, this Term; *Pollock* v. *United States*, 202 F. 2d 281, 284 (C. A. 5), certiorari denied, 345 U. S. 993; *Gariepy* v. *United States*, 189 F. 2d 459, 461–462 (C. A. 6); *United States* v. *Potson*, 171 F. 2d 495, 498 (C. A. 7); *Schuermann* v. *United States*, 174 F. 2d 397, 399 (C. A. 8), certiorari denied, 338 U. S. 831; *Barcott* v. *United States*, 169 F. 2d 929, 931–932 (C. A. 9), certiorari denied, 336 U. S. 912; *Graves* v. *United States*, 192 F. 2d 579, 584 (C. A. 10).

6. We return briefly to the argument (Pet. Br. 42–44) that there was no proof, passing now the problem of the starting point, that unreported taxable income was the source of the net worth increases. We have reviewed sufficiently the evidence from which the jury, contrary to petitioners' view, was entitled to find that unreported income from the hotel business was the answer. *Supra*, pp. 8–10, 21–23, 43–51. We reemphasize only the fallacy in petitioners' efforts to accentuate the negative. The proof relating to the hotel business showed taxable income—not gifts or inheritances or tax-free bonds—as the source of the increases. Petitioners' explanations said in so many words, "The whole answer is a store of cash we had in 1946." That explanation and the demonstration of its falsity also ruled out gifts, inheritances, etc. In a word, the Government proved *affirmatively* petitioners' receipt of unreported taxable income. That proof inevitably carried with it the negations petitioners demand. To prove that X killed the victim is to prove that Y or Z did not. But nobody supposes that every murder case must contain evidence specifically and expressly negating the guilt of other possible murderers. No more is it essential in every case of attempted tax evasion that an agent testify in so many words that he could find no gifts or inheritances.

Petitioners acknowledge (Br. 25–26) that there was no such specific evidence in *United States* v.

Johnson, 319 U. S. 503, and attempt to explain that case on the ground that there "an undisclosed source of taxable income was discovered." Here, however, while the source of their income was not undisclosed, there was evidence entitling the jury to find that the source was a far richer one than petitioners had reported it to be. And the problem is one of fact, not of law. There is no rule that gifts and inheritances need not be expressly negated where an "undisclosed source" is found, but must be when an "understated source" is found. It was enough in *Johnson* that the jury was justified in finding an undisclosed source (see 319 U. S. at 516–517); it is enough here that the jury was similarly justified in finding a source which, though disclosed, was falsely represented.

It remains *conceivable*, though their elaborate explanations belied the possibility, that petitioners had gifts or inheritances or other tax-free receipts sufficient to account for their large net worth increases. But this is all. In such circumstances, we submit, the Government has made a case for the jury without undertaking to supply proof of all the negatives counsel can suggest. Cf. *Rossi* v. *United States*, 289 U. S. 89, 91–92; *United States* v. *Fleischman*, 339 U. S. 349, 360–361; *Morrison* v. *California*, 291 U. S. 82, 88–91; *Casey* v. *United States*, 276 U. S. 413, 418; *Yee Hem* v. *United States*, 268 U. S. 178, 185; *Wilson*

v. *United States*, 162 U. S. 613, 619. Information as to unknown or secret gifts or inheritances was peculiarly within petitioners' knowledge and could readily have been suggested by them either in their elaborate explanations before trial or in the specific evidence they would almost surely have had at the trial. To take this position is in no sense to shift the burden of proof, as petitioners continually complain has been done. Petitioners were of course entitled to propose as a reasonable doubt the possibility (incredible on this record) that they had had gifts or inheritances. Where they err is in the claim that, without proof directed specifically to the negation of this possibility, and despite the clear evidence affirmatively showing unreported taxable income, the Government failed to establish a case sufficient for the jury.

B. *Petitioners' exculpatory statements, which required no corroboration, were in any event amply corroborated*

In written statements, signed under oath, petitioners undertook to explain to the Government's investigators the apparently suspicious circumstances surrounding their tax returns. If true, the explanations completely absolved them of liability. Thus, the statements bear no resemblance to confessions. And there is no remote suggestion that these declarations, preceded by clear warnings and statements of petitioners' constitutional

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rights, were in any way involuntary or improperly induced.

In these circumstances, the rule requiring corroboration of confessions has no meaningful application. The danger against which that rule guards—the danger of "errors in convictions based upon untrue confessions alone" (*Warszower* v. *United States*, 312 U. S. 342, 347)—is wholly absent here. Petitioners would never have come to trial, no less have been convicted, on their statements alone.

In the Government's brief in *Opper* v. *United States*, No. 49, pp. 25–45, the point stated in the foregoing paragraph is argued at length. Urging that point as sufficient to dispose of the corroboration issue here, we respectfully refer the Court to that brief.

In still another pending case (*United States* v. *Calderon*, No. 25), the Government's brief (pp. 16–31) presents the argument that an admission which (though not exculpatory) does not itself acknowledge guilt or any element of an offense need not be corroborated by independent evidence of the specific fact admitted. There again, our point is that such an admission, however damaging it may turn out to be when combined with other facts proving the crime, is also outside the reason for the corroboration rule. We note further that such an admission, since it establishes no element of the *corpus delicti*, is necessarily ac-

companied by independent proof of each element of the *corpus delicti* if the evidence is sufficient to convict. Because independent proof of these elements (not necessarily proof beyond a reasonable doubt) satisfies the most stringent version of the corroboration rule, the rule is at best a redundancy, as applied to such admissions. That position is also applicable to petitioners' contention that their admissions as to the starting point were not corroborated. If our argument on the evidence preceding and following the present discussion—i. e., the argument that the evidence sustains the verdict—is correct, it follows that there was independent evidence of every element of the *corpus delicti,* since none of those elements was established by petitioners' admissions alone. Leaving the details of this point to our brief in *Calderon,* we turn to the third and independently decisive answer: petitioners' admissions as to the starting point were adequately corroborated.

Without repeating our detailed statements of the evidence, the corroborative proof may be briefly summarized. Evidence of petitioners' financial history, testimony by special agents who had independently investigated the facts (*e. g.,* the facts as to Holland's stock holdings), other testimony as to Holland's stock dealings, and his prior tax returns, all tended to prove the facts he admitted as to assets other than cash on hand

at the starting point.[25] In addition, the evidence that petitioners' undisputed net worth at times after the beginning of 1946 was attributable to unreported income during those times further corroborated the petitioners' statements in so far as these statements, stripped of the false explanation, admitted a net worth of under $20,000 at the starting point.[26] The foregoing evidence—extensive in its details though briefly stated—was sufficient corroboration of petitioners' statements bearing on the starting point.

C. Wilfulness was established

Petitioners assert (Br. 44) that "not one single item of evidence was introduced to justify submission of the case to the jury on the question of willfulness." The assertion is mistaken. The evidence, if sufficient in other respects, showed a consistent pattern of underreported income in large amounts; it showed conscious filing of false returns; and it showed a persevering sense of culpability demonstrated by the attempted false explanations. There was ample basis for inferring

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[25] This independent proof included admissions by Holland himself made years before the offense charged. No corroboration was required for such admissions. *Warszower* v. *United States*, *supra*.

[26] Of course, the Government's task was to refute, not to corroborate, the assertions as to cash on hand. There is for obvious reasons no suggestion that these assertions should have been corroborated.

the kind of knowing, purposeful wrongdoing "wilfulness" describes. Cf. *Spies* v. *United States*, 317 U. S. 492, 500.[27]

D. *The acquittal for 1946 and 1947 cannot impair the conviction for 1948*

Recognizing "that inconsistency of jury verdicts is not a matter for reversal" (Br. 45), petitioners indicate that it was extraordinary for the jury in this case to have found them not guilty for 1946 and 1947 and guilty for 1948. We submit, however, that if there is anything extraordinary about the verdict, it is merely the jury's failure to find petitioners guilty for 1946 and

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[27] Though they make no complaint against the instructions on the issue of wilfulness in their arguments on the instructions (Br. 47–58), petitioners add under the present point an observation (Br. 44) that "The evidential deficiency in this respect is spotlighted by the trial court's instruction on the question of wiilfulness (R. 215)." They then proceed to quote and criticize as "the trial court's instruction" only part of the instructions on this question. Beyond the point where petitioners' quotation ends there are two additional paragraphs of instruction on wilfulness, the second of which includes the following (R. 215–216):

"* * * The court instructs you, as I have already told you, one of the essential elements of a crime is wilfullness. The Government charges and the indictment charges that these defendants knowingly and wilfully attempted to defeat and evade. The term 'wilfulness,' Ladies and Gentlemen, is best defined as a state of mind of the taxpayer wherein he is actually aware of the existence of the tax obligation to the Government, which he seeks to deceive. A wilfull evasion of the tax requires an intentional act or omission, as contrasted with an accidental, inadvertent, or innocent one."

1947. Nothing petitioners suggest warrants departure here from the controlling principle petitioners profess to accept, for other cases. The separate counts marked separate offenses; the fact that the attempted evasion charged appeared to be part of a steady pattern extending over the three years is no reason for insisting that the acquittal for two years could justify reversal of the guilty verdict for the third. It is, of course, this apparent pattern which gives rise to whatever apparent inconsistency there may be in the verdict. But the result is no more offensive to logic, and no less within the domain of the jury's secret processes, than it is in other cases governed by the rule precluding reversal for inconsistency.

E. *The evidence sustained Mrs. Holland's conviction.*

This final point on the evidence, touched lightly by petitioners (Br. 46), warrants only a brief response. If, as we have shown, the evidence was sufficient against Mr. Holland, it was no less sufficient against his wife. They worked closely together during the prosecution years; she knew their business affairs intimately, shared in running the hotel business, filed a joint return with him for the year for which they were convicted, and joined in his false explanations. She was jointly and severally liable for the tax which she joined him in attempting to evade. Internal Revenue Code of 1939, Section 51 (b). On all

the evidence, the jury was justified in finding her guilty.

IV

THE TRIAL COURT'S INSTRUCTIONS PRESENT NO GROUNDS FOR REVERSAL

A. *Burden of proof*

Petitioners contend that the trial court did not properly instruct the jury on burden of proof because (1) it refused to give a requested instruction on the requirements of proof by the net worth method, (2) it limited and shifted the burden of proof, and (3) it incorrectly defined "reasonable doubt" (Br. 47–54).

1. The first of these contentions—that petitioners' requested instruction should have been given—is answered both by the evident incorrectness of that request and by the thoroughly adequate instructions the trial court actually gave on the requirements of proof. It is settled that when a trial court gives all of the essential instructions, a defendant is not entitled to any additional instructions, even though appropriate, unless they are requested in proper form; it is not incumbent upon the court to reframe the proposed instructions if they are in need of revision. See *Caminetti* v. *United States*, 242 U. S. 470, 495.

Although the trial court not only instructed the jury on the elements of the offense charged, the presumption of innocence, and the burden of proof (R. 212–213; 215–216), but also explained,

at some length, the nature of the net worth method of proof in particular and of circumstantial evidence in general (R. 208–211), the petitioners now urge (Br. 47–49) that the trial court erred in refusing to give one of the two instructions which they requested on the nature of the net worth method of proof. (See Instructions 11 and 15, R. 227–228, 229–230.) This instruction (quoted at Pet. Br. 48), as requested, was erroneous for at least three reasons. *First*, it stated that the Government was required to produce evidence that excluded *all possible* available sources of *taxable* income from which the increased net worth and the excess expenditures could have been derived (R. 229). This would in effect have told the jury that the Government was required to prove that no crime had been committed. But, aside from the absurd effect resulting from use of the word "taxable" rather than "nontaxable," the Government was merely required to establish circumstances from which reasonable jurors could find that the possibility of nontaxable income being the explanation of the net worth increases and excessive expenditures had been disproved beyond a reasonable doubt. Cf. *United States* v. *Johnson*, 319 U. S. 503, 517–518; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 254; *Glasser* v. *United States*, 315 U. S. 60, 80; *Gorin* v. *United States*, 312 U. S. 19, 32. *Second*, the requested instruction stated

that the jury should return a verdict of not guilty if they had a reasonable doubt whether the Government in its net worth computation had omitted assets of the defendants, on December 31, 1948, the ending point (R. 229–230). An omission of that nature, however, would have furnished no basis for a not guilty verdict since such an omission would have been in the defendants' favor. Cf. note 19, p. 44, *supra*. *Third*, the requested instruction stated that the jury should return a verdict of not guilty if they had a reasonable doubt whether the Government had omitted assets of the defendants on January 1, 1946, the starting point, further stating that one of the essential elements that the Government must establish was that the defendants had *no* assets on that date other than those which the Government contended they had (R. 229–230). An omission of assets from the starting point, December 31, 1945, would have constituted a crucial deficiency, however, only if the omission was so substantial as to have had a significant effect upon the amount of income shown by the computation to have been underreported; it was not necesary for the Government to prove the exact amount of unreported income. *United States* v. *Johnson*, 319 U. S. 503, 517. In the form requested, the proposed instruction on net worth was, therefore, properly denied.

2. Petitioners made no objection in the trial court like their objection here (Br. 49–52) that the

trial court, in its discussion of petitioners' statements that they had had $113,000 in undeposited cash by 1946, limited the Government's burden to mere refutation of these statements. Their failure to object when they should have not only precludes their contention here (Rule 30, F. R. Crim. P.); it serves also to point up the fact that the instructions in question, coinciding precisely with the theory petitioners themselves had pressed, were entirely appropriate. Moreover, petitioners are in error when they assert that these particular instructions should be read alone as stating the exclusive "total effect" (Br. 49) of all the instructions; the charge as a whole made clear that the refutation of their cash fund story was by no means sufficient in itself to convict.

From their opening statement to the jury, devoted almost exclusively to a promise to show a cash hoard, through their examination of the Government's witnesses, to their closing arguments (*supra*, p. 23), petitioners' counsel emphasized the plain fact that this attempted explanation was crucial in the case. Since, unless the starting point could be shaken, the fact and amount of petitioners' subsequent expenditures and acquisitions were undisputed (Pet. Br. 45), and since the explanation implicitly denied any other possible explanation, the emphasis by both prosecution and defense on this point was perfectly understandable. In defense counsel's lan-

guage at the trial, it was clear that the starting point was "the cornerstone of this case" (R. 186). It is true, of course, that petitioners were not being tried for a crime of failing to have a cash hoard; it was equally true that the principal defendant in *United States* v. *Johnson*, 319 U. S. 503, was not being tried for owning gambling resorts. Nevertheless, just as in *Johnson* "The decisive issue of fact was whether Johnson's relation to these resorts was that of a patron or of a proprietor" (319 U. S. at 516), so here, as the Court of Appeals observed (R. 351), "the ultimate and precise issue in the case was whether they [the jury] believed beyond a reasonable doubt from the established circumstances that there was no such fund in existence on January 1, 1946."

However, while this was true as a matter of practical fact, the trial court's instructions were not limited to the presentation of this decisive issue. The charge stated all the elements of the offense alleged, the presumption of innocence, and the Government's burden of proving each element beyond a reasonable doubt (R. 212–213; 215–216). And in the very portion of the instruction to which petitioners tardily object here, the court said (R. 213):

> If you believe, Ladies and Gentlemen of the Jury, and are satisfied beyond a reasonable doubt that the Government's evidence that Mr. Holland and Mrs. Holland did not

manner, we submit, the jury was properly instructed "as to the law with respect to the particular situation before it" and no doubt was left as to the circumstances under which a crime could be "found to have been committed." *Graham* v. *United States*, 187 F. 2d 87, 90 (C. A. D. C.), certiorari denied, 341 U. S. 920.

CONCLUSION

The judgment of the Court of Appeals is correct and should be affirmed.

Respectfully submitted.

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> have that cash fund, *or any other source of the money with which they increased their net worth except the gross receipts of this business in the taxable years in question,*[28] then you should bring in a verdict of guilty, *if you also find*, Ladies and Gentlemen of the Jury, *that they have proved to your satisfaction, beyond a reasonable doubt, all of the essential and material elements of the charges in this indictment.* [Emphasis added.]

Here, as throughout, the instructions were phrased in terms of the Government's burden of proof beyond a reasonable doubt; they afford no ground for the contention (Pet. Br. 51–52) that the trial judge shifted this burden. Nor was any such shift involved in the explanation of the vital cash fund issue. As we have noted, the failure to suggest this in the extensive objections to the instructions in the trial court (R. 218–222) reflects a recognition that it was necessary and

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[28] The petitioners refer (Br. 51, fn. 17) to the Government's reliance on this phrase in its brief in opposition and draw a distinction between gross receipts, on the one hand, and net receipts plus depreciation, on the other. This phrase was pointed out in the Government's brief in opposition to show that the trial court instructed the jury that in order to convict they must be satisfied beyond a reasonable doubt that the petitioners' net worth increases not only did not result from use of the alleged prior accumulation of cash (the real issue) but also did not result from the use of nontaxable receipts from any other source (a mere speculative possibility). No issue was raised in the courts below or in this Court which suggests any pertinence of the technical distinction between gross receipts and net receipts plus depreciation.

proper for the trial judge to treat the cash hoard issue at some length. That tacit acknowledgment and the sufficiency of the burden of proof instructions as a whole defeat the new argument raised here.

3. A further objection not presented in the trial court is the contention (Pet. Br. 52–54) that the trial court erred in a portion of its instructions defining reasonable doubt. The argument is addressed to the sentence we italicize in the following passage from the instructions (R. 217):

> When I say that the Government must bring before you evidence which satisfies your minds beyond a reasonable doubt, the court does not mean that you should understand that the Government has the burden of satisfying you beyond every doubt, to remove every doubt, leaving no doubt at all. What we are talking about is a doubt based upon reason and common sense, in the exercise of your intelligence. It is a substantial doubt, not a trivial doubt; a significant doubt, not a flimsy one; a real doubt, and not an imaginary one. *It's the kind of doubt, Ladies and Gentlemen of the Jury, which you folks in the more serious and important affairs of your own lives might be willing to act upon.* Now if you feel such a doubt about the Government's case, it is your duty to acquit them.

It is, of course, recognized as essential in a criminal case that the jury be instructed that

they are to reach a verdict of guilty only if the evidence satisfies them of the defendant's guilt beyond a reasonable doubt. However, since the term "reasonable doubt" is in itself simple and generally comprehended, attempts further to explain it "do not usually result in making it any clearer to the minds of the jury." *Miles* v. *United States,* 103 U. S. 304, 312; *Dunbar* v. *United States,* 156 U. S. 185, 199. Accordingly, a further explanation to the jury of the meaning of the term "reasonable doubt" is not ordinarily of vital importance, *Hopt* v. *Utah,* 120 U. S. 430, 440, and, when given, is not required to follow any fixed or inflexible formula. *Dunbar* v. *United States, supra; United States* v. *Schireson,* 116 F. 2d 881, 883 (C. A. 3); 9 Wigmore, *Evidence* (3d ed.), Sec. 2497. It is generally held to be sufficient if the jury is given to understand that a reasonable doubt is one having a rational basis rather than one depending merely upon whim or speculation. *United States* v. *Klock,* 210 F. 2d 215 (C. A. 2), certiorari denied, 347 U. S. 960; *Williams* v. *United States,* 208 F. 2d 447 (C. A. 5), certiorari denied, 347 U. S. 928; *United States* v. *Farina,* 184 F. 2d 18 (C. A. 2), certiorari denied, 340 U. S. 875; *Murphy* v. *United States,* 33 F. 2d 896 (C. A. 3), certiorari denied, 280 U. S. 584.

Taken as a whole, the trial court's explanation of reasonable doubt in the instant case met the

standard. Perhaps, as an abstract matter, the sentence petitioners extract would have been better had it been phrased in terms of a doubt leading to a *hesitation to act* rather than a doubt leading one *to act*. Even this is questionable in view of this Court's declaration long ago that a jury should not be told "to set up any other standard of judgment than that which influenced them in the ordinary business of life." *Dunlop* v. *United States*, 165 U. S. 486, 500.[29] What is most important,

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[29] In the *Dunlop* case, the following instructions were claimed to be erroneous (p. 499):

"'It is your duty to come to a conclusion upon all those facts, and the effect of all those facts, the same as you would conscientiously come to a conclusion upon any other set of facts that would come before you in life.' 'There is no technical rule; there is no limitation in courts of justice, that prevents you from applying to them (the facts and circumstances in evidence) just the same rules of good, common sense, subject always, of course, to a conscientious exercise of that common sense, that you would apply to any other subject that came under your consideration and that demanded your judgment.'"

Rejecting the argument, this Court said (pp. 499–500):

"There was no error in these instructions. One of the main objects of a jury trial is to secure to parties the judgment of twelve men of average intelligence, who will bring to bear upon the consideration of the case the sound common sense which is supposed to characterize their ordinary daily transactions. If cases were to be decided alone by the application of technical rules of law and evidence, it could better be done by men who are learned in the law and who have made it the study of their lives; and while it is entirely true that the jury are bound to receive the law from the court, and to be guided by its instructions, it by no means follows that they are to abdicate their common sense, or to adopt any different proc-

however, is that the point petitioners stress is at best a relatively subtle and abstruse concept. Viewing the whole charge on reasonable doubt, there is no reason to suppose that the jury was led to exercise an erroneous judgment on the sufficiency of the evidence, or that its verdict could have been influenced by the language to which petitioners now except.

Support for this conclusion is found in the fact that petitioners interposed no objection on this ground in the trial court. If on so basic a question as reasonable doubt the distinction they now find vital was likely to affect the jury significantly, it is reasonable to suppose the point would have

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esses of reasoning from those which guide them in the most important matters which concern themselves. Their sound common sense brought to bear upon the consideration of testimony, and in obedience to the rules laid down by the court, is the most valuable feature of the jury system and has done more to preserve its popularity than any apprehension that a bench of judges will wilfully misuse their power. To construe these instructions as authorizing the jury to depart from the rules of evidence and to decide the case upon abstract notions of their own, or from facts gathered outside of the testimony, is hypercritical. They were simply told to come to a conclusion upon the facts that had been proven, and to apply to those facts the same rules of good sense that they would apply to any other subject that came under their consideration and demanded their judgment. In these remarks the court gave a just and accurate definition of their functions. It certainly would have been error to have told them to apply to the facts proven any other rules than those which their good common sense dictated, or to set up any other standard of judgment than that which influenced them in the ordinary business of life."

been noticed by counsel and raised when there was opportunity to do something about it. As is frequently the case, the tardiness of their complaint casts doubt on its substance; it is in addition, of course, a sound reason for refusing to consider the problem at all. Rule 30, F. R. Crim. P.

B. *Circumstantial evidence*

The petitioners challenge the adequacy of the instructions on circumstantial evidence in general and assert that the trial court erred in refusing to give an additional, requested instruction to the effect that, where the Government's evidence is circumstantial, it must be such as to exclude every reasonable hypothesis other than that of guilt.[30] (Br. 54–56.)

The instruction on circumstantial evidence in general was clearly adequate. After summarizing the theories of both the prosecution and the defense, the trial court pointed out that the Government's evidence of attempted tax evasion was circumstantial, since it purported to establish unreported taxable income by proof of increases in net worth and proof that the only reasonable

[30] Actually, in their written instructions the petitioners sought to have the jury instructed not merely that circumstantial evidence must be such as to remove from their minds any *reasonable* hypothesis of innocence (R. 227), but also that it must be such as to remove from their minds "*every* hypothesis, save that of his or her guilt" (R. 228, emphasis added).

source of such increases was current, taxable income from the petitioners' hotel, bar and restaurant business (R. 208–210). He then said to the jury (R. 210):

> What is the nature of circumstantial evidence? It is your province, Ladies and Gentlemen of the Jury, in resolving these issues to determine what evidence you will believe, and what you think it proves to your satisfaction, beyond a reasonable doubt. You may, in arriving at your conclusions, look at the facts which are in proof in this record. And you may do something more than that. You may, Ladies and Gentlemen, a good cross section of the citizenry of this state, use your common sense and your intelligence, and you may ask yourselves what inferences reasonably may be drawn from the circumstances which you think are established by this proof.

He further illustrated the nature of circumstantial evidence by pointing out the different inferences which the prosecution and the defense had argued the jury should draw from the fact that the petitioner Marion L. Holland was a successful speculator in the stock market (R. 210–212). The jurors were repeatedly told that the evidence must be sufficient to establish guilt beyond a reasonable doubt before they could convict. (R. 207, 210, 212, 213–214, 215, 216, 217.) They were specifically instructed (R. 215):

> It is not necessary for the Government to offer direct proof of any elements of this

> offense. It is enough if you are satisfied beyond a reasonable doubt by the circumstantial evidence in this case in making your decision and arriving at your verdict.

Finally, with respect to the ultimate inference which the Government asked the jury to draw regarding the one crucial issue in the case as well as with respect to all essential elements of the offense charged, the trial court told the jury (R. 213):

> If you * * * are satisfied beyond a reasonable doubt * * * that Mr. Holland and Mrs. Holland did not have that cash fund, or any other source of the money with which they increased their net worth except the gross receipts of this business in the taxable years in question, then you should bring in a verdict of guilty, if you also find * * * that they have proved to your satisfaction, beyond a reasonable doubt, all of the essential and material elements of the charges in this indictment.

According to the great weight of federal authority, where, as here, a jury is instructed on the presumption of innocence and the Government's burden of proving its case beyond a reasonable doubt, the additional, requested instruction that the evidence, if circumstantial, must exclude every reasonable hypothesis of innocence is not only unnecessary but is also either redundant or—to the extent it would indicate that different degrees of proof are required for direct and cir-

cumstantial evidence—misleading.[31] This was first pointed out by Judge Learned Hand in *United States* v. *Austin-Bagley Corp.*, 31 F. 2d

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[31] A different formula from that requested by petitioners, namely that the jury should acquit if the circumstances are as consistent with innocence as with guilt, has been discussed in several cases. In the old case of *Garst* v. *United States*, 180 Fed. 339, 343, never since cited with approval, the Fourth Circuit held that such an instruction should be given. A dictum to the same effect in *Gurera* v. *United States*, 40 F. 2d 338, 340 (C. A. 8), has likewise never been cited with approval. In *McLendon* v. *United States*, 13 F. 2d 777, 779, the Sixth Circuit held that the usual instruction on the presumption of innocence and reasonable doubt was sufficient, although it was said to be better practice to tell the jury that they should acquit the defendant if the circumstances were as consistent with innocence as with guilt.

The only federal cases we have been able to find which clearly require a specific instruction that circumstantial evidence must be such as to preclude every reasonable hypothesis except that of guilt are two old cases in the Fifth Circuit, neither of which has ever been cited with approval, and one recent case in the Sixth Circuit. The Fifth Circuit cases are *Anderson* v. *United States*, 30 F. 2d 485, and *Stutz* v. *United States*, 47 F. 2d 1029. The Sixth Circuit case is *Hanson* v. *United States*, 208 F. 2d 914, 916. The Sixth Circuit's opinion, in *Hanson* relies upon cases dealing with the quantum of evidence necessary to go to the jury, not with instructions—cases which actually show that the "reasonable doubt" and "reasonable hypothesis" formulas are equivalents. See p. 83, *infra*. And the Fifth Circuit in *Beckman* v. *United States*, 96 F. 2d 15, has tacitly abandoned its earlier holding and quoted with approval portions of opinions of the Second and Eighth Circuits to the contrary. For the confusion in state court decisions, see 1 Randall, *Instructions to Juries* (1922 ed.), Secs. 226–235; 3 *id.*, Sec. 1983; 1 Branson, *Instructions to Juries* (3d ed., 1936), Secs. 65–66; 5 *id.*, Sec. 3327; Note, 89 A. L. R. 1379.

229, 234 (C. A. 2), certiorari denied, 279 U. S. 863, and a few years later the same judge criticized the *Garst*, *Anderson* and *Stutz* cases (*supra*, note 31, p. 80) in the following language (*United States* v. *Becker*, 62 F. 2d 1007, 1010 (C. A. 2)):

> The requirement seems to us a refinement which only serves to confuse laymen into supposing that they should use circumstantial evidence otherwise than testimonial. All conclusions have implicit major premises drawn from common knowledge; the truth of testimony depends as much upon these, as do inferences from events. A jury tests a witness' credibility by using their experience in the past as to similar utterances of persons in a like position. That is precisely the same mental process as when they infer from an object what has been its past history, or from an event what must have preceded it. All that can be asked is that the importance of the result to the accused shall demand a corresponding certainty of his guilt; and this is commonly and adequately covered by telling them that the conclusion shall be free from fair doubt. To elaborate this into an inexorable ritual, or to articulate it for different situations, is more likely to impede, than to promote, their inquiry.

Other federal decisions following this view include: *Corbett* v. *United States*, 89 F. 2d 124 (C. A. 8); *Stryker* v. *United States*, 95 F. 2d 601, 604 (C. A. 10); *United States* v. *Valenti*,

134 F. 2d 362, 364 (C. A. 2), certiorari denied, 319 U. S. 761; *United States* v. *Spagnulo*, 168 F. 2d 768, 770 (C. A. 2), certiorari denied, 335 U. S. 824; *McCoy* v. *United States*, 169 F. 2d 776, 784–786 (C. A. 9), certiorari denied, 335 U. S. 898; *Samuel* v. *United States*, 169 F. 2d 787, 791 (C. A. 9); *Himmelfarb* v. *United States*, 175 F. 2d 924, 942 (C. A. 9), certiorari denied, 338 U. S. 860; *United States* v. *Kemble*, 197 F. 2d 316, 320 (C. A. 3); cf. *United States* v. *Dolasco*, 184 F. 2d 746, 748 (C. A. 3); *United States* v. *Augustine*, 189 F. 2d 587, 591 (C. A. 3). Eminent text writers have offered the same criticism of the specific instructions desired by petitioners. See 1 Wigmore, *Evidence* (3d ed.), Secs. 25–26; 9 *id.*, Sec. 2497; 2 Wharton, *Criminal Evidence* (11th ed.), Sec. 926.

The essential similarity between proof beyond a reasonable doubt and proof which eliminates any reasonable hypothesis of innocence is shown by this Court's opinion in *Allen* v. *United States*, 164 U. S. 492, 500, and by the cases petitioners invoke (Br. 55–56) describing the quantum of evidence required to take a case to the jury (not the proper words to include in instructions).[32] In

[32] These cases include: *Epstein* v. *United States*, 174 F. 2d 754 (C. A. 6) (one of two cases of a similar nature relied on by the Sixth Circuit in the *Hanson* case, *supra*, note 31, p. 80); *Strickland* v. *United States*, 155 F. 2d 167 (C. A. 5); *Cross Co.* v. *Simmons*, 93 F. 2d 482 (C. A. 8); *Eierman* v. *United States*, 46 F. 2d 46 (C. A. 10); *Montgomery* v. *United*

Allen, this Court held that where an instruction on presumption of innocence and the Government's burden of proving its case beyond a reasonable doubt had been given, the trial court properly refused to repeat that charge in effect by giving a requested instruction that where there is a probability of innocence, there is a reasonable doubt. Likewise, the learning to which petitioners refer defining evidence sufficient to submit a case to a jury reinforces the view that the concept of excluding any reasonable hypothesis of innocence is essentially the same as the concept of proof beyond a reasonable doubt. The quantum of sufficient evidence is adequately defined either way; the verbal formulas are interchangeable. See, *e. g.*, *Curley* v. *United States*, 160 F. 2d 229, 232–233 (C. A. D. C.), certiorari denied, 331 U. S. 837.

We submit, in sum, that it was clearly enough that the trial court explained fully the character of circumstantial evidence, the presumption of innocence, and the Government's burden of proof beyond a reasonable doubt. The court properly

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States, 203 F. 2d 887 (C. A. 5); *United States* v. *Fenwick*, 177 F. 2d 488 (C. A. 7); and *Bryan* v. *United States*, 175 F. 2d 223 (C. A. 5), affirmed, 338 U. S. 552, rehearing denied, 338 U. S. 957. In *Pollock* v. *United States*, 202 F. 2d 281 (C. A. 5), certiorari denied, 345 U. S. 993, and *Banks* v. *United States*, 204 F. 2d 666 (C. A. 8), certiorari denied, 346 U. S. 857, order denying certiorari vacated and case restored to docket, 347 U. S. 1007, the trial court gave the instructions requested by the defendants.

refused to add the instruction—at best redundant, at worst confusing—that, because the Government's proof was circumstantial, it was required to exclude any reasonable hypothesis of innocence.[33]

C. Statutory basis of the crime

Petitioners' remaining contention (Br. 56–58) is that the trial judge, because he failed to read the applicable statute to the jury, did not properly instruct them on the statutory offense charged. The argument ignores the well-founded principle that the instructions need not follow any fixed form or adopt any prescribed language; the dispositive answer to the argument is that

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[33] In the foregoing argument we have assumed that the Government's case for each year of the indictment period was based solely on circumstantial evidence. Actually, however, this overlooks certain previously mentioned direct evidence, namely, the testimony of Mr. DeLue to the effect that in February, 1947, the petitioner Marion L. Holland stated that he had already earned more from the hotel, bar and restaurant business than his 1946 and 1947 returns show he reported. The instruction requested was not limited to the year 1948. Under such circumstances, the instruction, even if otherwise appropriate, was not required to be given. *Barshop* v. *United States*, 191 F. 2d 286, 292–293 (C. A. 5), certiorari denied, 342 U. S. 920; *Sloan* v. *United States*, 31 F. 2d 902, 906 (C. A. 8); *Portman* v. *United States*, 34 F. 2d 406, 408 (C. A. 8); *Carnahan* v. *United States*, 35 F. 2d 96, 104 (C. A. 8), certiorari denied, 281 U. S. 723; *Sullivan* v. *United States*, 32 F. 2d 992, 994 (C. A. 9); *McMillan* v. *United States*, 27 F. 2d 94, 96 (C. A. 8); 1 Randall, *Instructions to Juries* (1922 ed.), Secs. 226–227; 1 Branson, *Instructions to Juries* (3d ed., 1936), Sec. 65.

the trial judge properly stated, not only the issues determining guilt or innocence in this case, but the essential elements of the offense in general.

It is familiar law that a trial judge may properly use his own language in instructing the jury and is not required to state the terms of the statute under which the prosecution is proceeding. *Wright* v. *United States*, 175 F. 2d 384, 388 (C. A. 8), certiorari denied, 338 U. S. 873; *United States* v. *Quick*, 128 F. 2d 832, 835 (C. A. 3); *Downing* v. *United States*, 35 F. 2d 454, 456 (C. A. 9); *Aeby* v. *United States*, 206 F. 2d 296, 299 (C. A. 5), certiorari denied, 346 U. S. 885. Moreover, both eminent authority and logic support the position that an instruction on the crime charged is sufficient if it explains the issues determining guilt. Thus, in *United States* v. *Center Veal & Beef Co.*, 162 F. 2d 766, 771 (C. A. 2), Judge Learned Hand criticized the cases upon which the petitioners rely (Br. 57), as follows:

> It is true that the Third Circuit in three decisions, *United States* v. *Levy*, 3 Cir., 153 F. 2d 995; *United States* v. *Noble*, 3 Cir., 155 F. 2d 315; *United States* v. *Piacourt*, 3 Cir., 159 F. 2d 917, has held, where the crime was selling above the ceiling price, that it is necessary to explain the regulations to the jury, and that the judge's failure to do so vitiates the conviction, even though the defendant did not ask him to do so. Moreover, there is language in

> the books to the effect that the jury must always be told to "apply the law to the facts," and that it is not enough merely to tell them what issues of fact determine guilt. In *Morris* v. *United States*, 9 Cir., 156 F. 2d 525, there is an elaborate collection of these expressions. It is of course true that a jury has the power to acquit the accused, though they may believe that he is guilty; and that this is an inherent element in the system. Nevertheless, since admittedly it is their duty to accept the law as the judge gives it to them, we cannot understand what distinction there is, except one of mere form, between telling them what issues determine guilt, and what legal propositions they should apply to the evidence. The only conceivable difference, so far as we can see, is that the second method may be thought to give them a larger apparent latitude for disregarding the law and substituting their own notions of justice. We are extremely skeptical that it has even that effect; and we are not at the moment ready to assume that the encouragement of such a disposition is essential to the preservation of our liberties.

See also *United States* v. *Capitol Meats, Inc.*, 166 F. 2d 537, 539 (C. A. 2), certiorari denied, 334 U. S. 812.

Instructing even more fully than would be required by the principles stated in the foregoing quotation, the trial court in this case formulated

the issues determining guilt and explained the essential elements of the offense charged—namely, (1) an attempt to evade and defeat a tax by underreporting taxable income and (2) wilfulness. See *Spies* v. *United States*, 317 U. S. 492, 497–499. At the outset, the judge read the various counts of the indictment, which embodied the language of the statute, and stated the amounts of income taxes the defendants had allegedly attempted to evade (R. 205–206). After outlining the factual issues raised by both the defense and the prosecution, and describing the nature of circumstantial evidence (R. 208–212), the judge said (R. 212–213):

> The issue in this case is whether or not these defendants filed those income tax returns, reporting the income on those returns and the tax computed from it, knowingly and wilfully not including gross receipts from the business which the Government claims they earned, and which the Government claims they didn't report.

Thereafter, the judge pointed out the essential element of an attempt to evade and defeat and the essential element of wilfulness, stated that some additional tax must be found to be due, and explained that petitioners could not be convicted unless the jury found beyond a reasonable doubt that they had wilfully attempted to evade a substantial part of that tax (R. 215–216). In this

APPENDIX

MR. AND MRS. M. L. HOLLAND

Item	NET WORTH				Witness and citation
	Dec. 31, 1945	Dec. 31, 1946	Dec. 31, 1947	Dec. 31, 1948	
ASSETS					
U. S. National Bank Checking Account M. L. Holland	$2,064.18	$10,169.63	$130.70	$439.50	Davis, R. 24.
Montana Nat'l Bank, Jt. Account	88.91	12.70	12.70		Ferguson, R. 32.
First Nat'l Bank, Golden	0	6,988.80	5,888.41	7,663.16	Fortune, R. 32–33.
Stock—20th Century-Fox	20,650.00	0	0	0	Cost and disposition per 1946 return, R. 239.
Stock—Midland Steel	9,000.00	0	0	0	Cost and disposition per 1946 return, R. 239.
Hotel	0	72,750.00	72,750.00	72,750.00	De Lue, R. 34–35—Discount 5% or $2,250, R. 37.
Coffee Shop	0	15,000.00	15,000.00	15,000.00	De Lue, R. 35 (also per return, R. 235).
Equipment (So. Equipment Co.)	0	0	0	7,965.00	Dorsey, R. 42; Ex. E, R. 158, 263.
Equipment (Carson Crockery)	0	0	0	4,283.44	Reed, R. 45; Ex. F, G, H, R. 158, 263.
Improvements—F & F—Hotel and Coffee Shop	0	3,904.56	19,353.60	38,851.97	Per depreciation schedules, returns, R. 235, 243, 253.
Horses	0	0	1,000.00	1,000.00	Craig, R. 46–46.
House 815 13th Street, Golden	0	10,000.00	10,000.00	10,000.00	Landry, R. 46–47.
Five lots 10th Street, Golden	0	3,000.00	3,000.00	3,000.00	Larned, R. 53–54.
Strip of Land Blk. 32, Golden	0	0	500.00	500.00	Waters, R. 55.
Barn—building material	0	0	0	1,742.24	Davison, R. 58–60.
160 Acre Tract, Golden	0	0	0	6,000.00	Davison, R. 59, 60. Ex. I, J, K, R. 263–264.
1500 Ford Street, Golden (frame apt. and improvements)	0	0	9,085.00	9,825.00	Dulaigh, R. 155–156.
Inventory—Hotel and Coffee Shop	0	1,300.00	2,247.05	2,460.00	Per 1946, 1947 and 1948 returns, R. 235, 243, 253.
Total Assets	31,803.09	123,125.69	138,967.46	181,480.37	

MR. AND MRS. M. L. HOLLAND—Continued

Item	NET WORTH				Witness and citation
	Dec. 31, 1945	Dec. 31, 1946	Dec. 31, 1947	Dec. 31, 1948	
LIABILITIES					
Outstanding checks	0	$3,976.90	$8,835.82	$6,622.08	Garvin, R. 157-158.
U. S. Nat'l Bank	$11,703.84	25,000.00	15,000.00	0	Davis, R. 24-25.
Leonard De Lue	0	10,000.00	0	0	De Lue, R. 35.
Fred Landry	0	4,000.00	0	0	Landry, R. 46-47.
Carl Larned	0	2,975.00	0	0	Larned, R. 53-54.
Golden Savings & Loan Assn	0	0	3,431.39	2,409.04	Rose, R. 63.
T. C. Hitchings & Son	0	0	0	25,000.00	Hitchings, R. 68.
New York Life Insurance Co	446.00	0	0	0	Voight, R. 102.
Olson Investment Co	506.66	506.66	506.66	506.66	Thode, R. 112, Horowitz, R. 139.
Depreciation	0	2,651.45	7,746.45	14,604.68	Per returns, R. 235, 243, 245, 255.
Total Liabilities	12,650.50	49,110.01	35,520.43	49,142.46	
Net Worth	19,152.59	74,015.68	103,447.03	132,337.91	
Net Worth Increase		54,863.09	29,431.35	28,890.88	
Add—Nondeductible Expenditures:					
Federal income taxes paid:					
In Colorado		1,500.00	3,487.00	768.69	Hoeft, R. 21.
In Montana		302.00	178.70		R. 295, Ex. BB and CC.
Life Insurance premiums:					
Security Life & Accident Co				2,609.50	Aregood, R. 100.
New York Life Insur. Co		745.85	693.60	692.65	Voight, R. 101-102.
Total (Net Worth Increase plus Nondeductible Expenditures)		57,410.94	33,790.25	32,961.72	
Deduct—Nontaxable income:					
Nontaxable capital gain		10,968.44			Per return, R. 239.
Income tax refund				914.56	Hoeft, R. 21.
Reconstructed Net Income		46,442.50	33,790.25	32,047.16	
Reported		15,336.93	5,717.57	10,211.42	R. 235-A, 247, 257.
Unreported		31,105.57	28,072.68	21,835.94	

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 37

MARION L. HOLLAND AND ETHEL E. HOLLAND, *Petitioners*,

v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 37

MARION L. HOLLAND AND ETHEL E. HOLLAND, *Petitioners*,

v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR REHEARING

Petitioners pray that this Court grant rehearing of its decision of December 6, 1954, affirming convictions for income tax evasion for the year 1948.

REASONS FOR GRANTING REHEARING

In its opinion of December 6, 1954, this Court for the first time laid down definitive rules to cover tax evasion prosecutions based upon the net worth method. Petitioners

accept those rules and base this petition upon this Court's misapplication of them.

I. WILLFULNESS

It is respectfully submitted that the rule on "willfulness" should have compelled this Court to reverse and remand, instead of affirming, the judgments appealed from, and that it would have done so were it not for the Court's reliance upon

> (1) a factual misstatement, on page 16 of the opinion, that contradicts on its face the correct and undisputed fact as stated on page 7 of the same opinion;
>
> (2) a second factual misstatement which not only is without foundation in the record but was diligently avoided by the Government in its brief; and
>
> (3) an erroneous instruction to the jury by the trial court, which, by virtue of the above errors, could under no circumstances have been cured.

The principal portion of the Court's opinion upon which this petition depends reads as follows (Opinion, p. 16):

> "*Willfulness Must be Present.*
>
> A final element necessary for conviction is willfulness. The petitioners contend that willfulness 'involves a specific intent which must be proven by independent evidence and which cannot be inferred from the mere understatement of income.' This is a fair statement of the rule. Here, however, there was evidence [1] of a consistent pattern of underreporting large amounts of income, and [2] of the failure on petitioners' part to include all of their income in their books and records. Since, [3] on proper submission, the jury could have found that these acts supported an inference of willfulness, their verdict must stand. *Spies* v. *United States*, *supra*, at 499-500."

1. "Consistent Pattern of Underreporting."

The first of two "factual" bases upon which this Court upheld petitioners' convictions with respect to the element of willfulness was "a consistent pattern of underreporting large amounts of income." Presumably the Court was alluding to its footnote 8 which stated that

> "The record indicates that the income of the hotel as reported for 1946 was approximately 12½% of that reported by the previous owner in 1945; in 1947 the ratio was 12%; and in 1948 it was 26%." (Opinion, p. 14).

From this statement the Court evidently concluded that because income reported in ensuing years was substantially *less* than in 1945, it must have been *underreported;* and that because it was less in each of the *three* subsequent years, it was *consistently* underreported. Such conclusion not only is not warranted by everyday experience, since the decline in a proprietor's business[1] cannot and does not imply that he is a tax evader, but, with respect to the case at bar, subjects the petitioners to a extreme form of double jeopardy: the undisputed fact is that petitioners were accused of underreporting income for 1946 and 1947 *and were found not guilty* (Opinion, p. 7). To now ignore their acquittal and reinstate—to imply guilt—evidence upon which the jury deliberated and determined innocence, amounts, in substance, to conviction without trial after aquittal with trial. Yet absent evidence of 1946 and 1947 understatement, what this Court erroneously described as a "pattern" of underreporting is reduced to evidence of one year's under-

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[1] Significant in this connection was the testimony of the prior owner of Holland House that when another bar—The Golden Nugget—opened up in the vicinity in 1946, Holland "lost substantial business as a result" (R. 38, 40).

reporting.[2] And such evidence is no evidence at all under this Court's ruling that "wilfulness . . . cannot be inferred from the mere understatement of income" (Opinion, p. 16).

2. "Failure to Include All Income in Books."

The second "factual" basis relied upon by the Court to show willfulness was "the failure on petitioners' part to include all of their income in their books and records" (Opinion, p. 16). This statement referred to what the Court described as evidence

> "*that the books did not reflect the receipt of money* later withdrawn from the hotel's cash register for the personal living expenses of the petitioners and for payments made for restaurant supplies" (Opinion, p. 14, emphasis added).

The italicized statement is without any basis whatsoever in the record and the Government in its brief declined even to imply it. The evidence did show that the petitioners kept no records of monies withdrawn from the cash registers for personal living expenses. While absolutely true, this proved nothing: there was no evidence that to the extent such monies were withdrawn, the receipts of the register were understated. The Court assumed such a relationship on no evidential basis. There is not the slightest reason to record for income tax purposes monies withdrawn from the registers for personal

---

[2] It is significant in this connection to note that the only evidence of 1948 underreporting of income is the remote comparison with "that reported by the previous owner in 1945" (Opinion, p. 14n8)—evidence of a character the jury rejected for 1946 and 1947. At the very same time, the Government declined the opportunity for much more current and timely evidence as to Holland House 1948 income when it refused petitioners offer in October, 1949 to permit an agent to stand by the cash registers from day to day and compare receipts with those reported in prior years (R. 89).

living expenses. Such amounts play no part in the computation of taxable income so long as the initial receipts are properly recorded as income. Similarly, with respect to payments for the purchase of restaurant equipment, there was no evidence indicating that to the extent such payments were made the gross receipts had been understated. The evidence showed only that these payments were properly recorded on the petitioners' checkbooks, and that the petitioners had in fact overstated their taxable income by failing to reflect depreciation on the equipment represented by these expenditures (R. 160-161).

Lest any implication of willfulness be drawn from the Court's statement "that the cash register tapes, on which the books were based, were destroyed by the petitioners" (Opinion, p. 14), it should be noted that the term "destroyed" finds no basis in the record. The evidence throughout was to the effect that after the Hollands prepared their daily report for the accountant from the cash register tapes they were "thrown out in the waste basket, as they are just now" (R. 313), since "I have no further use for them" (R. 313, 75, 78). And the record is devoid of any evidence or implication that discarding cash register tapes was an unusual or significant practice, or that it in any way departed from normal custom and practice of proprietors in whose business cash registers are used. Moreover, while the statutes and regulations impose upon taxpayers the burden of maintaining books and records, petitioners are aware of nothing that requires them to keep such items as cash register tapes. Indeed, an inference of willfulness from the mere failure to preserve such tapes is all the more unfortunate and unwarranted in light of the fact that a taxpayer having a fraudulent design would find it no burden to destroy the actual cash register tapes each day and to run off a completely new and false set, and accumulating them.

3. "On Proper Submission."

This Court concluded that "since, on proper submission" the above quoted acts "supported an inference of willfulness," the jury's verdict must stand, citing *Spies* v. *United States*, at 499-500 (Opinion, p. 16). But in light of the petitioners' foregoing analysis showing that the "pattern" of underreporting was no pattern at all, and that the "failure" to include on the books all income received was, in reality, nothing more than the non-recording of non-deductible and thus irrelevant (tax-wise), expenses, the premise of the Court's conclusion, and hence the conclusion itself, dissolved. Reversal on willfulness was thus dictated by the evidence, since as this Court pointed out in the cited portion of *Spies* v. *United States*, 317 U. S., at 500, "if the evidence fails to afford such an inference [of willfulness], the defendant should be acquitted." Moreover, the implication of the Court's language that "upon *proper* submission, the jury *could have* found" willfulness is that this Court realized that the instruction on which the trial court submitted the case to the jury was, in fact, erroneous. Such inference of error is correct. The trial court told the jury:

> "You may infer willfulness if the inference to your mind is reasonable from all the facts and circumstances in evidence. *You may consider Mr. and Mrs. Holland's relationship to each other*, what each did in the business, and all of the acts in evidence that they have committed or failed to commit at any time" (R. 215, emphasis added).

Although the italicized language finds no basis whatever in law, and no attempt was made by the Government to defend it in the four-sentence section on willfulness in its 91-page Brief (pp. 64-65), it apparently carried great weight with the jury which convicted petitioners only for the year 1948, the lone year in which both Mr. and Mrs. Holland were jointly indicted.

II. THE NON-PREJUDICIAL EFFECT ACCORDED THE IMPROPER INSTRUCTION ON "REASONABLE DOUBT" VIOLATES THE SPECIFIC, FUNDAMENTAL AND PRECAUTIONARY STANDARDS TO BE FOLLOWED IN NET WORTH PROSECUTIONS AS PRONOUNCED AND ESTABLISHED IN THE OPINION FOR THE GUIDANCE AND DIRECTION OF APPELLATE AND TRIAL COURTS.

At Page 17 of its Opinion and decision, the Court, in passing upon Petitioners' specification of error, touching and concerning the Trial Court's instruction on "reasonable doubt" characterized it as follows:

> "* * * He [the trial court] defined it as 'the kind of doubt * * * which you folks in the more serious and important affairs of your own lives might be willing to act upon.' We think this section of the charge should have been in terms of the kind of doubt that would make a person hesitate to act, * * * rather than the kind on which he would be willing to act. But we believe that the instruction as given was not of the type that could mislead the jury into finding no reasonable doubt when in fact there was some. *A definition of a doubt as something a jury would act upon would seem to create confusion* rather than misapprehension. * * *" (emphasis added)

It is respectfully suggested that an instruction which "would seem to create confusion" does not meet the precautionary requirements that:

> "Trial Courts should approach these cases in the full realization that the taxpayer may be ensnared in a system which, though difficult for the prosecution to utilize, is equally hard for the defendant to refute. *Charges should be especially clear, including, in addition to the formal instructions, a summary of the nature of the net worth method*, the assumptions on which it rests, and the inferences available both for and against the accused." (Opinion, p. 6, emphasis added)

The necessity for a clear and proper instruction on reasonable doubt is further emphasized and would seem

to be mandatory by the Court's holding, (Opinion, p. 17) in passing upon the trial court's refusal to instruct the jury upon circumstantial evidence and its nature, that:

> "The better rule is that where the jury is *properly instructed on the safeguards of reasonable doubt*, such additional instruction on circumstantial evidence is confusing and incorrect." (emphasis added)

Thus, in this pure net worth case, the innocence or guilt of Petitioners is adjudicated, on the one hand, without an instruction on the character of circumstantial evidence, and its effect, and, on the other hand, with an improper and confusing instruction on reasonable doubt. Under these circumstances, the hypothesis upon which the "better rule" is premised does not exist. This, we urge, denies to the accused the "safeguards traditionally provided in the administration of criminal justice. * * *" (Opinion, p. 2) in a type of prosecution "so fraught with danger for the innocent that the courts must closely scrutinize its use." (Opinion, p. 3) and by reason of the premises the prejudicial effect of the challenged instruction becomes immediately apparent:—

> "When circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation." (Opinion, p. 7)

Over and beyond the serious implications imputed to the challenged instruction hereinabove, we respectfully point up that the effect of the instruction is to increase the degree or character of the doubt which entitles a defendant in every criminal case to a verdict of acquittal from a finding of reasonableness to a finding of positive

innocence. It decreases the burden of proof imposed upon the Government by reducing the quantum of proof required to convict from "beyond a reasonable doubt" to a "preponderance of the evidence". It has the effect of making synonomous the term "reasonable doubt" with the term "preponderance of the evidence", for reasonable men and women in the important transactions of life, act upon a preponderance of fact or circumstance, and, many times, they do so without being fully convinced of the correctness or reasonableness of such a conclusion. In this connection we again suggest, that every Appellate Court, who has had the opportunity to pass upon the specific challenged instruction, has held it to be prejudicial. See: *Commonwealth* v. *Miller*, 139 Pa. 77, 21 Atl. 138; *State* v. *Rover*, 11 Nev. 343; and *People* v. *Remmerly*, 87 Cal. 117, 25 Pac. 266.

III. CONCLUSION

A most important and essential contribution to the safeguarding of defendant's rights in income tax evasion cases was rendered by this Court when it cautioned the trial courts to exercise "great care and restraint" in this type of case "which is so fraught with danger for the innocent that the courts must closely scrutinize its use" (Opinion, p. 3). Petitioners respectfully submit, however, that in sustaining the proof of this case on the evidential basis set forth above, this Court itself departed from those standards to which it has urged adherence by lower courts.

For the foregoing reasons, petitioners request that this Court's opinion and judgment be modified so as, at least,

to order a new trial on the basis of the newly announced principles.

Respectfully submitted,

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I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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